

No. 2395

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

CENTRAL NATIONAL FIRE INSURANCE
COMPANY OF CHICAGO, ILLINOIS, a
Corporation,

Plaintiff in Error,

vs.

WILLIAM BLACK,

Defendant in Error.

VOLUME I.

(Pages 1 to 224, Inclusive.)

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Southern Division.

Filed

JUL 1 - 1914

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Counsel.

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CHARLES E. MILLER, Esquire, South Bend, Washington;

MAURICE A. LANGHORNE, Esquire, Tacoma Building, Tacoma, Washington;

E. M. HAYDEN, Esquire, Tacoma Building, Tacoma, Washington; and

FREDERIC D. METZGER, Esquire, Tacoma Building, Tacoma, Washington,

Attorneys for Defendant in Error.

Praeclipe for Transcript.

To the Clerk of the Above Court:

You will please prepare and certify to constitute record on appeal in the above case copies of the following papers; omitting all captions, verifications, acceptances of service and other endorsements, excepting on the first paper:

1. This praecipe;
2. Complaint and exhibit; petition, bond and order of removal;

2 *Central National Fire Ins. Co. of Chicago, Ill.*

3. Amended answer;
4. Reply to amended answer;
5. Interrogatories propounded to plaintiff under Sec. 1226, Ballinger's Code Washington;
6. Answers to interrogatories;
7. Stipulation as to tender (dated Oct. 23, 1913);
8. Verdict;
9. Judgment;
10. Motion for new trial;
11. Order denying *motion new* trial;
12. Order extending time for bill of exceptions to Jan. 10, 1914;
13. Bill of exceptions and order settling;
14. Assignments of error;
15. Petition for writ of error and order allowing, etc.;
16. Bond on writ of error;
17. Writ of error;
18. Citation.
19. And the following exhibits:
Plaintiff's Exhibit 2;
Plaintiff's Exhibit 3;
Plaintiff's Exhibit 4 (writing only); [1*]
Defendant's Exhibit "A-8"—Inventory;
Defendant's Exhibit "A-5" (Nos. 444, dated June 16, 1908, and No. 476, dated June 23, 1908);
Defendant's Exhibit "B"—Bank statement;
Defendant's Exhibit "C"—Letter;
Defendant's Exhibit "D"—Letter;
Defendant's Exhibit "E"—Letter;

*Page-number appearing at foot of page of original certified Record.

Defendant's Exhibit "F"—Letter;
Defendant's Exhibit "G"—Letter;
Defendant's Exhibit "H"—Letter;
Defendant's Exhibit "I"—Letter dated Oct.
11, 1912;
Defendant's Exhibit "J"—Letter;
Defendant's Exhibit "K"—Letter;
Defendant's Exhibit "L"—Letter;
Defendant's Exhibit "M"—Letter;
Defendant's Exhibit "Y" (parts only of this
exhibit, being bill of Apr. 2, 1908, for 5 bbls.
Green River, etc.; bill of June 26, 1909, for
5 bbls. Old Crowe and statement follow-
ing);
Defendant's Exhibit "X" (last page only).

COLE & COLE,

Attorneys for Plaintiff in Error, Central National
Fire Ins. Co.

[Endorsed]: "Filed in the U. S. District Court,
Western District of Washington, Southern Division.
Jan. 8, 1914. Frank L. Crosby, Clerk. By E. C.
Ellington, Deputy." [2]

*In the Superior Court of the State of Washington,
in and for the County of Pacific.*

1297.

WILLIAM BLACK,

Plaintiff,

vs.

CENTRAL NATIONAL FIRE INSURANCE COMPANY OF CHICAGO, ILLINOIS,

Defendant.

Summons.

The State of Washington to the Said Central National Fire Insurance Company of Chicago, Illinois, Defendant.

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you, according to the demand of the complaint which will be filed with the clerk of said court and a copy of which is herewith served upon you.

J. J. BRUMBACH,
CHAS. E. MILLER,
Attorneys for Plaintiff.

P. O. Adressss, South Bend, Wash. [3]

Complaint.

The plaintiff complains of the defendant above named and alleges:

1. That the defendant is a corporation duly

created by and under the laws of the State of Illinois pursuant to an act of the legislature of said State of Illinois and having its principal office at the city of Chicago in that State.

2. That the plaintiff was the owner of a certain stock of merchandise consisting principally of wines, liquors, cigars, beer and soda and mineral waters kept for sale by him, in the two-story, shingle roof, frame building and adjoining and communicating additions thereto, occupied by plaintiff as a saloon and situated on lot 6, in block 6, of Tinker's north addition to Long Beach, Pacific County, Washington, at the time of its insurance and destruction by fire as hereinafter mentioned.

3. That on the 18th day of June, 1912, at said Long Beach, Washington, in consideration of the payment by the plaintiff to the defendant of the premium of \$137.50, the defendant by its agents duly authorized thereto, made its policy of insurance in writing, a copy of which is annexed hereto, marked Exhibit "A" and by this reference made a part hereof.

4. That on the 27th day of June, 1912, said two-story frame building and the store furniture and fixtures contained therein, together with the plaintiff's above-described stock of merchandise and the goods, wares and merchandise kept for sale by the plaintiff, were totally destroyed by fire.

5. That the plaintiff's loss thereby was Five Thousand Dollars.

6. That on the 23d day of August, 1912, he, the plaintiff, furnished the defendant with proof of his

said loss of said [4] stock of merchandise and otherwise performed all the conditions of said policy on his part.

7. That the defendant has not paid said loss nor any part thereof.

Wherefore the plaintiff demands judgment in the sum of Five Thousand Dollars, for his costs in this behalf expended, and such other relief as the Court shall deem appropriate.

J. J. BRUMBACH,
CHAS. E. MILLER,
Attorneys for Plaintiff

P. O. Address, South Bend, Wash.

Filed Dec. 6th, 1912. E. A. Seaborg, Clerk.

Exhibit "A"—Stock Policy.

No. 590,757. \$5000.00

Standard Fire Insurance Policy. [5]

Central National Fire Insurance Company,
Chicago, Illinois.

Incorporated 1909. Stock Company.

IN CONSIDERATION OF THE STIPULATIONS HEREIN NAMED AND OF one hundred &

Dollars premium does insure Wm. Black for the term of one year from the 18th day of June, 1912, at noon, the 18th day of June, 1913, at noon against all direct loss or damage by fire, except as herein-after provided, to an amount not exceeding Five Thousand Dollars, to the following described property while located and contained as described herein, and not elsewhere, to wit:

Amount \$5000—Rate 2.75—Premium \$137.

MERCHANDISE FORM.

\$5000.00 on his stock of merchandise, consisting principally of wines, liquors, cigars, beer, soda & mineral water and all other goods, wares and merchandise not more hazardous kept for sale by assured, while contained in two-story shingle roofed frame building and adjoining and communicating additions thereto, while occupied as saloon and situated on lot 6, Blk. 6, Tinker's north add. to Long Beach, Pacific Co., Wash.

\$ nil on store furniture and fixtures while contained in said building.

\$ nil other concurrent insurance permitted.

Powder and Kerosene.—Permission granted to keep for sale not to exceed fifty pounds of gunpowder and five barrels of kerosene oil, the latter to be of not less than the United States standard of 110 degrees, neither to be handled or sold by artificial light.

Electric Lights.—Permission for electric lights, it [6] being agreed that wires shall be doubly coated with approved insulating material, and protected where they enter buildings, by porcelain or hard rubber insulators, and shall also have fusible cut-offs.

Lightning Clause.—This policy shall cover any direct loss or damage caused by lightning (meaning thereby the commonly accepted use of the term lightning, and in no case to include loss or damage by cyclone, tornado or windstorm), not exceeding the sum insured, nor the interest of the insured in

the property and subject in all other respects to the terms and conditions of this policy: Provided, however, if there shall be any other insurance on said property this company shall be liable only *pro rata* with such other insurance for any direct loss by lightning, whether such other insurance be against direct loss by lightning or not; and provided further that, if dynamos, wiring, lamps, motors, switches or other electrical appliances or devices are insured by this policy, this company shall not be liable for any loss or damage to such property resulting from any electrical injury or disturbances, whether from artificial or natural causes, unless fire ensues, and then for the loss by fire only.

Attached to and forming a part of policy No. 590,-757 of the Central National Fire Insurance Co. of Chicago, Illinois.

HENRY KAYLER,
Agent.

Attached to and forming a part of policy No. 590,-757, Agency at ——.

CENTRAL NATIONAL FIRE INSURANCE
COMPANY.

In consideration of \$ nil and of the following warranties by the assured, permission is hereby given for using the [7] —— gasoline lamp, by piped into it being warranted by the assured that the reservoir thereof shall be filled by daylight only, when the lamp is not in use; that no fire, blaze, or artificial light shall be permitted in the room where and when such reservoir is being filled; that no gasoline, except such as is contained in such reservoir,

shall be kept within the building; and that not more than five gallons which shall be contained in an automatic closing metallic can shall be kept on the premises connected with said building.

Caution.—The danger of gasoline lamps is not so much in themselves as in having the gasoline on the premises. At ordinary temperature gasoline continually gives off inflammable vapor, and a light some distance from it will ignite it through the medium of this vapor. It is said that one pint of gasoline will impregnate 200 cubic feet of air and make it explosive, and it depends upon the proportions of air and vapor whether it becomes a burning gas or a destructive explosive. Beware of any leaks in cans, and never forget how dangerous a material you are handling. Never attempt to fill the lamp reservoir while the lamp is burning, or if any light is in the room. A little carelessness may hazard your life as well as property.

HENRY KAYLER,

Agent.

This policy is made and accepted subject to the foregoing stipulations and conditions and the stipulations and conditions stated in detail on the reverse side of this contract, which form a part hereof as full as if recited herein, together with such other provisions, agreements or conditions as may be endorsed hereon or added hereto, and no officer, agent or other representative of this Company [8] shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement endorsed hereon

10 Central National Fire Ins. Co. of Chicago, Ill.

or added hereto, and as to such provisions and conditions no officer, agent or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured so written or attached.

IN WITNESS WHEREOF, this company has
executed and attested these presents, but this policy
shall not be valid until countersigned by the duly
authorized agent of the company at

General Manager.

COUNTERSIGNED AT Long Beach, Wash., this
18th day of June, 1902.

HENRY KAYLER,
Agent. [9]

STIPULATIONS AND CONDITIONS.

This Company shall not be liable beyond the actual cash value of the property at the time any loss or damages occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deductions for depreciation, however *cause*, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of *like and* quality; said ascertainment or estimate should be made by the insured and this Company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum of

which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this Company in accordance with the terms of this policy. It shall be optional, however, with this Company to take all of any part of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this Company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud, or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement [10] endorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased

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by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering or repairing the within described premises, for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building or a ground not owned by the insured in fee simple; or if the subject of insurance be personal property and be or become encumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title, or possession of the subject of the insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above-described premises, benzine, benzole, dynamite, ether, fireworks, gasoline, greek fire, gunpowder exceeding twenty-five pounds in quantity, naptha, nitro-glycerine, or other explosives, phosphorus or petroleum [11] or any of its products of greater inflammability than kerosene oil of the United States Standard (which last may be used for lights and kept for sale according but in quantities, not exceeding five barrels, provided

it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, riot, civil war or commotion, or military or usurped power, or by order of any civil authority; or by neglect of the insured to use all reasonable means to same and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning, but liability for direct damages by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deed, evidences of debt, money, notes, or securities; nor, unless liability is specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools or property held on storage or for repairs; nor beyond the actual value destroyed by fire, for loss occasioned ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or [12] otherwise; nor for any greater

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proportion of the value of plate glass, frescoes and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan or description of property be referred to in this policy, it shall be a part of this contract and warranty by the insured.

In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this Company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this Company at the time of renewal of this policy shall be void.

This policy shall be canceled at any time at the request of the insured; or by the Company by giving five days' notice of such cancellation. If this policy shall be canceled as hereinbefore provided or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy of last renewal, this Company retaining the customary short rate; except that when this policy is canceled by this Company by giving notice it shall retain only the *pro rata* premium.

If, with the consent of this Company, an interest under this policy shall exist in favor of a mortgage or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interests as shall be written upon, at-

tached or appended [13] hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not, in any case of removal, whether to one or more location be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not.

If fire occur the insired shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this Company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge, and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof, and the

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amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property and a copy of all the descriptions and schedules all policies and changes in the title, use, occupation, [14] location, possession, or exposure of said property since the issuing of this policy; by whom and for what purpose and building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof, if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested *appraiser*, the

insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall [15] bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability

for reinsurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery, by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustained in any court of law or equity until after full compliance by the insured with all the foregoing requirements nor unless commenced within twelve months next after [16] the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached or appended hereto. [17]

State of Washington,
County of Pacific,—ss.

I, William Black, being first duly sworn, depose and say that I am the plaintiff in the above-entitled action; that I have read the foregoing complaint, know the contents thereof and that the same and the

whole thereof is true as I verily believe.

WILLIAM BLACK.

Subscribed and sworn to before me this 3d day of December, 1912.

[Seal]

J. J. BRUMBACH,

Notary Public for the State of Washington, Residing at Ilwaco, Washington. [18]

Petition for Removal to the United States District Court.

Comes now the Central National Fire Insurance Company, of Chicago, Illinois, a corporation, the defendant in the above-entitled action, and petitions the above-entitled court, and sets forth and alleges as follows:

I.

That your petitioner, Central National Fire Insurance Company, of Chicago, Illinois, the defendant in the above-entitled action, is now and was at the commencement of said action, and at all times therein mentioned, a corporation created by, and organized and existing under and by virtue of the laws of the State of Illinois, and is now and was at the commencement of the above-entitled action a citizen and resident of the State of Illinois.

II.

That plaintiff, William Black, is now and was at the commencement of this action, and for a long time prior thereto, a citizen and resident of the State of Washington, residing in Pacific County, Washington.

III.

That said William Black commenced the above-

entitled action in the above-entitled court to recover from the defendant herein the sum of five thousand dollars and the costs and disbursements of the action, claiming and alleging said sum to be due said plaintiff from said defendant, arising out of an alleged contract of insurance claimed to have been entered into by and between the plaintiff and defendant.

IV.

That said sum and said cause of action and the subject matter of said cause of action is a matter in dispute between [19] the plaintiff and defendant and defendant has a good, valid and meritorious defense to said action and intends to defend the same.

V.

That the summons in the above-entitled action was served on the Insurance Commissioner of the State of Washington on the 23d day of December, 1912; that the time for pleading to the complaint filed in said cause, under the laws of the State of Washington, has not yet expired, as forty days have not elapsed since the service of said summons was made.

VI.

That your petitioner herein has not yet appeared or pleaded in said action; that the matter in dispute, exclusive of interest and costs, exceeds the sum of \$2,000.00, to wit, the sum of \$5,000.00.

Your petitioner herewith tenders a good and sufficient bond, according to law, for its entering in the District Court of the United States for the Western District of Washington, on the 1st day of its next session, a copy of the record of this action, and for paying all costs that may be awarded in said District

Court if said court shall hold that this action was wrongfully or improperly removed thereto.

WHEREFORE, your petitioner prays that this Court will proceed no further herein except to make an order of removal of this action to said District Court, to accept said bond, and to cause the record herein to be removed to said District Court.

CENTRAL NATIONAL FIRE INS. CO.,

By FRANK E. DOOLY, Agt.,
Petitioner.

COLE & COLE and
W. F. MAGILL,

Attorneys for Petitioner.

Filed January 31st, 1913. E. A. Seaborg, Clerk.
[20]

State of Oregon,
County of Multnomah,—ss.

I, Frank E. Dooly, being first duly sworn, depose and say that I am the agent of the defendant in the above-entitled action; and that the foregoing petition is true as I verily believe. That I have personal knowledge of the facts and matters therein alleged and set forth.

FRANK E. DOOLY.

Subscribed and sworn to before me this 30th day of January, A. D. 1913.

[Seal] BARTLETT COLE,
Notary Public of the State of Oregon. [21]

Bond.

KNOW ALL MEN BY THESE PRESENTS,
that we, the Central National Fire Insurance Com-

pany, of Chicago, Illinois, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and the United States Fidelity and Guaranty Company, a corporation organized and existing under and by virtue of the laws of the State of Maryland and regularly and duly authorized, empowered and qualified, under the laws of the State of Washington, to become a surety on bonds, undertaking, etc., are held and stand firmly bound unto William Black, the above-named plaintiff, in the penal sum of five hundred dollars (\$500.00), for the payment whereof, well and truly to be made unto the said William Black, his heirs or assigns, we bind ourselves, our representatives, successors and assigns, jointly and firmly by these presents, upon condition nevertheless, that WHEREAS, the said Central National Fire Insurance Company, of Chicago, Illinois, the defendant above named, has filed its petition with the Superior Court of the State of Washington in and for the County of Pacific, for the removal of a certain cause therein pending wherein the said William Black is plaintiff, and said Central National Fire Insurance Company, of Chicago, Illinois, is defendant, to the District Court of the United States for the Western District of Washington:

NOW, THEREFORE, if the said Central National Fire Insurance Company shall enter into the District Court of the United States for the Western District of Washington, within thirty days from the date of the filing of the petition for removal herein, a copy of the record in said action, and shall well and truly pay all costs that may be incurred in said Dis-

trict Court of the United States if said Court shall hold that [22] said action was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and virtue.

IN WITNESS WHEREOF, we, the said Central National Fire Insurance Company, of Chicago, Illinois, and The United States Fidelity and Guaranty Company, have caused this instrument to be executed by our duly qualified officers, this 30th day of January, 1913.

CENTRAL NATIONAL FIRE INSURANCE COMPANY, of Chicago, Ill.

FRANK H. DOOLY, Agt.,
Principal.

THE UNITED STATES FIDELITY AND GUARANTY COMPANY.

By DOUGLAS R. TATE,
Its Attorney in Fact,
Surety.

Countersigned: C. W. RORABECK,
Local Agent.

Filed January 31st, 1913. E. A. Seaborg, Clerk.

Jan. 31, 1913.

I hereby approve the within bond and the sureties thereon.

EDWARD H. WRIGHT,
Superior Judge. [23]

Order of Removal.

WHEREAS, the defendant, Central National Fire Insurance Company, of Chicago, Illinois, having filed

24 *Central National Fire Ins. Co. of Chicago, Ill.*

and presented its petition and bond for removal of this cause to the District Court of the United States for the Western District of Washington, and the Court finding the same to be in due form and the sureties to be good and sufficient, and further finding that this is a proper cause for removal to said Court, plaintiff being a citizen and resident of the State of Washington, and defendant a citizen and resident of the State of Illinois, the Court orders that no further proceedings be had in this action in the above-entitled court, and that the same be removed to the District Court of the United States for the Western District of Washington.

Dated this 31st day of January, 1913.

EDWARD H. WRIGHT,
Judge.

Bond to be filed in the sum of \$500.00.

WRIGHT, J.

Filed Jany. 31st, 1913. E. A. Seaborg, Clerk. [24]

State of Washington,
County of Pacific,—ss.

I, E. A. Seaborg, County Clerk and Clerk of the Superior Court of the State of Washington, in and for the County of Pacific, hereby certify the within and foregoing to be full, true and correct copies of the Summons and Complaint; Petition for Removal to the United States District Court; Bond on Removal, and Order of Removal, in that certain cause entitled William Black, Plaintiff, versus Central National Fire Insurance Company of Chicago, Illinois, Defendant.

That I have compared the same with the originals

and they are correct copies therefrom and of the whole thereof as the same remain on file and of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Superior Court, this 24th day of February, 1913.

[Seal] E. A. SEABORG,
County Clerk and Clerk of the Superior Court of the
State of Washington in and for the County of
Pacific.

[Endorsed]: Filed U. S. District Court, Western District of Washington. Feb. 26, 1913. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy. [25]

Amended Answer.

Comes now the defendant in the above-entitled action and for amended answer to the plaintiff's complaint herein admits, denies and alleges as follows:

I.

Defendant admits the allegations contained in paragraph I of plaintiff's complaint.

II.

Defendant denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph II of plaintiff's complaint, and therefore denies the allegations contained in said paragraph.

III.

Defendant admits that on the 18th day of June, 1912, at Long Beach, Washington, there was executed and delivered by defendant's duly authorized agent

its policy of insurance in writing, to said plaintiff, a copy of which is attached to plaintiff's complaint and marked Exhibit "A."

IV.

Answering paragraph IV of plaintiff's complaint, defendant admits that on the 27th of June, 1912, said two-story frame building mentioned in plaintiff's complaint was totally destroyed by fire, but denies any knowledge or information sufficient to form a belief as to whether the stock of merchandise and goods, wares and merchandise kept for sale by plaintiff were totally destroyed by fire, and therefore denies the same.

V.

Answering paragraph V of plaintiff's complaint, defendant denies each and every allegation contained in said paragraph. Defendant further alleges that plaintiff did not lose [26] the sum of \$5,000.00 by said fire, or any other sum in excess of \$1,000.00.

VI.

Defendant denies each and every allegation contained in paragraph VI of plaintiff's complaint, except that defendant admits on the 23d day of August, 1912, plaintiff furnished defendant with an alleged proof of loss.

VII.

Answering paragraph VII of plaintiff's complaint, defendant admits that it has not paid plaintiff for any alleged loss for the fire mentioned in plaintiff's complaint.

As a further and separate answer to plaintiff's complaint defendant alleges:

I.

That it was agreed by and between the plaintiff and defendant in said policy of insurance mentioned in plaintiff's complaint, as one of the stipulations and conditions of said policy, and provided in said policy, that if fire occur the insured shall within sixty days after the fire, unless such time is extended in writing by this company, render a statement to this company, signed and sworn to by said insured, stating amongst other things the knowledge and belief of the insured as to the time and origin of the fire, the interest of the insured and of all others in the property, the cash value of each item thereof and the amount of loss thereon; that the insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examination under oath by any person named by this company and subscribe the same, and as often as required shall produce for examination all books of account, bills, invoices and other vouchers, or certified [27] copies thereof, if the originals be lost, at such reasonable place as may be designated by this company, or its representative, and shall permit extracts or copies thereof to be made.

II.

That on or about the 10th day of September, 1912, and the 9th day of October, 1912, defendant requested and demanded from plaintiff that he produce to this defendant for examination all bills of purchases of stock since his last inventory, or if said bills of purchases had been destroyed then certified copies of the original bills. Defendant also demanded from the

plaintiff that he supply and produce to defendant a record of his sales made of stock since the date of his last inventory. This defendant also requested plaintiff on or about said dates to exhibit to this defendant his last authentic inventory taken of his stock, or a certified copy thereof. That plaintiff refused to produce for the examination of this defendant any bills, invoices, or other vouchers of any goods, or certified copies thereof, or any inventory thereof. That all of this defendant's requests and requirements for bills, invoices, vouchers, statements or inventory, or certified copies thereof as above set forth, were refused and denied by plaintiff.

III.

That on the 11th day of October, 1912, plaintiff notified defendant that he would not assist the defendant any further in investigating his said alleged fire loss, and plaintiff then and there stated that as far as he was concerned the matter was then and there ended, and that he would not further perform any of the requirements, agreements, conditions or covenants on his part to be performed under the terms of the policy set forth in plaintiff's complaint. [28]

As a further and separate answer this defendant alleges:

I.

That on or about the 23d day of August, 1912, plaintiff furnished and delivered to the defendant an alleged proof of loss in writing, which said alleged proof was subscribed and sworn to by plaintiff before a notary public in and for the State of Washington, residing at Long Beach, Washington.

II.

Plaintiff further alleges that in said alleged proof of loss plaintiff falsely and fraudulently represented to this defendant and set forth that the said plaintiff had on hand in his saloon at the time of said fire, wines, liquors, mineral water and cigars, of the value of \$7,378.85, which said property plaintiff claimed was covered and insured by said policy. Attached to and forming a part of said alleged proof of loss was a written statement setting forth the value of the items which plaintiff claimed were destroyed by said fire, and for which plaintiff claimed the defendant was liable under the terms of said policy. That among the items claimed by plaintiff was an item of five barrels of Old Crow Whiskey, which plaintiff falsely and fraudulently claimed to be of the value of \$1,000.00. Defendant further alleges that plaintiff did not have on hand the said five barrels of Old Crow Whiskey at the time of said fire, and that five barrels of Old Crow Whiskey would not be of any greater value than the sum of \$600.00, all of which the plaintiff well knew. Defendant further alleges that among the items claimed by plaintiff in said alleged proof of loss was an item of four barrels of Cedar Brook McBrayer's Whiskey, which plaintiff claimed were of the value of \$800.00. Defendant further alleges that plaintiff did not have on hand at the time of said fire four barrels of [29] Cedar Brook McBrayer's Whiskey, and that four barrels of Cedar Brook McBrayer's whiskey at the time of the fire would not have been of any greater value than

\$300.00, all of which the plaintiff well knew.

Defendant further alleges that among the items claimed by plaintiff in said alleged proof of loss was an item of three barrels of Green River Whiskey, which plaintiff claimed were of the value of \$750.00; that plaintiff did not have said property on hand at the time of said fire, that said property was not destroyed by said fire, and that three barrels of Green River Whiskey at the time of said fire would not be of any greater value than \$400.00.

That plaintiff's alleged proof of loss contained among other items the following:

3	Barrels Penwick Rye (1904).....	\$400.00
3	" " " (2 not tapped)..	400.00
1	Barrel Old Crow Whiskey (s gal. drawn)	350.00
1	Barrel Fox Mountain Whiskey.....	400.00
2	Barrels A. G. McBrayer's Whiskey...	300.00
1	Barrel Wictlow Whiskey.....	125.00
1	" California Port Wine.....	75.00
1½	" Hudson Bay Rum.....	50.00
2	" Clark Bros. Whiskey.....	214.35
1000	Attencion Cigars.....	35.00
900	Y. & B. Cigars.....	81.00
500	Van Dyke Cigars.....	45.00
1600	Optimo Cigars.....	144.00
100	Carabano Cigars.....	9.00
500	Alhambra Cigars.....	17.50
500	Gato Cigars.....	40.00
1½	Barrel Imported Port Wine.....	75.00
1½	" California Brandy.....	40.00

Defendant further alleges that the plaintiff did

not have the above-mentioned items of merchandise among his stock of goods on hand at the time of the fire; that the above items of merchandise were not destroyed by said fire, and that plaintiff falsely and fraudulently represented to this defendant, for the purpose of defrauding this defendant, that said items of merchandise [30] were among the stock of goods destroyed by said fire and were on hand for the plaintiff.

IV.

Defendant further alleges that plaintiff well knew at the time he delivered to this defendant his alleged proof of loss that the above items of merchandise were not of the value claimed by him, even if they had been on hand and among plaintiff's stock and destroyed by said fire. Defendant further alleges that plaintiff falsely and fraudulently claimed and represented to this defendant that the above items of goods were of values as above mentioned, whereas said items of goods were of great deal less value than the amounts claimed thereon, all of which was well known to the plaintiff. That plaintiff falsely and fraudulently represented to this defendant in said alleged proof of loss that his stock of goods destroyed by said fire was of the reasonable value of \$7,378.85, whereas said stock of goods was not of said value and was not at the time of its destruction by fire of any greater value than \$1,000.00. That plaintiff claimed in said alleged proof of loss payment for various other items of liquors which were not on hand or among his stock of goods destroyed, for the purpose of defrauding this defendant. De-

fendant further alleges that said alleged proof of loss contained items of merchandise not covered by said policy and not within the terms thereof, all of which plaintiff well knew, and that plaintiff made claim for the above mentioned items of goods from this defendant for the purpose of defrauding this defendant, and plaintiff falsely and fraudulently represented to this defendant that they were among the stock of goods destroyed by said fire.

V.

That the said policy of insurance described in plaintiff's complaint, provides, among other things, that in case of [31] any fraudulent or false swearing by the insured relating to his insurance or the subject thereof, whether before or after loss it shall render said policy void; that by reason of plaintiff's false swearing as aforesaid, and of plaintiff's attempt to defraud this defendant, said insurance policy is void and of no effect.

As a further and separate answer defendant alleges:

I.

That on or about the 18th day of June, 1912, this defendant executed and delivered to the plaintiff a certain policy of insurance, described in plaintiff's complaint.

II.

That on or about the 27th day of June, 1912, the building described in said policy was destroyed by fire, together with whatever stock of liquors, wines and cigars, plaintiff had on hand in said building at the time of said fire, which said fire was caused by

the act, design or procurement of the plaintiff, and not otherwise; that by reason thereof said policy is void and of no effect and this defendant is not liable thereunder.

III.

That this defendant has heretofore tendered to the plaintiff and now brings and tenders into court for the use and benefit of the plaintiff the insurance premium, amounting to \$137.50 received by this defendant from the plaintiff under said policy.

WHEREFORE, defendant demands that plaintiff take nothing by this action, that the same be dismissed and that defendant have and recover of and from the plaintiff herein [32] its costs and disbursements incurred in this action.

COLE & COLE and
W. F. MAGILL,
Attorneys for Defendant.

[Verified.]

[Endorsed]: "Filed in the U. S. District Court, Western District of Washington, Southern Division. Aug. 29, 1913. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." [33]

Reply to Amended Answer.

Now comes the plaintiff in the above-entitled action and for reply to the affirmative defenses set up in the amended answer of the defendants, says:

I.

Replying to the second paragraph of the first affirmative defense as contained in said answer, the

plaintiff alleges and avers the fact to be that he gave to said defendant, its agent and servants, all information in his possession concerning the amount of loss sustained by him under the policy sued on; that all of the invoices and the inventory of the stock of goods so contained in the building described in said policy of insurance were destroyed by fire, and it was impossible for plaintiff to produce the originals of the invoices and inventory, but said plaintiff did furnish to said defendant, its agent and servants, the names and addresses of all persons, firms and corporations with whom plaintiff had bought goods, so as to enable the said defendant, its agents and attorneys, to ascertain for themselves the extent of plaintiff's loss under said policy. The plaintiff denies that the request of defendant for bills, invoices, vouchers, statements or inventory or certified copies thereof were refused and denied by this plaintiff, but, on the contrary, the plaintiff alleges and avers the fact to be that he did everything within his power to comply with the terms and stipulations contained in said policy of insurance and with the demands and requests made by said defendant, its officers, agents and servants, for information concerning the extent of the plaintiff's said loss.

II.

For reply to the third paragraph of the first affirmative [34] defense, as contained in said answer, the plaintiff denies the same, the whole and every part thereof, and each and every allegation therein contained.

For reply to the second affirmative defense, as con-

tained in said answer, the plaintiff says:

I.

For reply to the second paragraph thereof, he admits that the proof of loss which he furnished to said defendant disclosed that at the time of the fire plaintiff had on hand wines, liquors, mineral water, cigars and other articles of personal property of the value of SEVENTY-THREE HUNDRED SEVENTY-EIGHT and 85/100 (\$7378.85) DOLLARS; admits that among the items of personal property plaintiff claims was destroyed was five (5) barrels of "Old Crow" whiskey, which plaintiff claimed and verily believes was of the value of the sum of ONE THOUSAND (\$1,000) DOLLARS, which whiskey the plaintiff avers and alleges that he had on hand at the time of said fire and which was destroyed therein; plaintiff admits that said proof of loss set forth the items of personal property mentioned and described in paragraph two (2) of the second affirmative defense, as contained in said answer, all of which were on hand at the time of said fire and which plaintiff, at the time of making proof of loss, verily believed to be of the value represented by him in his proof of loss so made to the defendant company.

II.

Replying to the third paragraph of said second affirmative defense, plaintiff denies the same, the whole and every part thereof and each and every allegation therein contained. [35]

III.

For reply to the matters and things contained in paragraph four (4) of the second affirmative defense

as contained in the amended answer, plaintiff denies that he made any false representations whatsoever concerning the value of the goods so destroyed by fire which plaintiff claims were covered by said policy of insurance, and denies that he made any false or fraudulent statements as to the items of goods of personal property so destroyed by fire, and he denies that in his proof of loss he falsely and fraudulently or at all made any false representations to the said defendant concerning the stock of goods so destroyed by fire; plaintiff denies that said stock of goods was not of any greater value than ONE THOUSAND (\$1,000) DOLLARS at the time of its destruction by fire, and alleges the fact to be that it was of the approximate value of SEVENTY-THREE HUNDRED SEVENTY-EIGHT and 85/100 (\$7378.85) DOLLARS. Plaintiff further alleges and avers the fact to be that the proof of loss so made out and sent to the defendant insurance company was wholly written, made out and constructed by HENRY KAYLER, the agent of said defendant, at Long Beach, in the State of Washington, and that if said proof of loss contained any items of merchandise or personal property not covered by said insurance, the same was not due to any fault or design on the part of the said plaintiff to in any manner defraud or deceive the said defendant company, but that said plaintiff wholly relied upon the said HENRY KAYLER, the agent of the said defendant insurance company, to properly make out said proof of loss and to include therein such items of personal property only as was covered by said policy of insurance, and plain-

tiff avers and alleges the fact to be on information and belief that if the said Kayler, the [36] agent of said defendant, did include in said proof of loss any items of personal property not covered by said policy of insurance, that the said was done without any design on the part of the said Kayler to defraud said insurance company, and plaintiff further avers and alleges the fact to be that in the making out of said proof of loss the said Kayler was acting for and on behalf of the defendant insurance company and not for and on behalf of this plaintiff.

IV.

For reply to the fifth paragraph of the second affirmative defense as contained in said amended answer, plaintiff admits that the policy of insurance upon which this action is brought provides among other things in case of any fraudulent or false swearing by the insured in the respects set out in said paragraph, that the policy becomes void, but plaintiff avers and alleges the fact to be that he has never been guilty of any false swearing or of any attempt to defraud the said defendant.

For reply to the third affirmative defense as contained in said answer, the plaintiff says:

I.

For reply to the second paragraph of said third affirmative defense, the plaintiff denies the same, the whole and every part thereof and each and every allegation therein contained.

II.

For reply to the third paragraph of the third affirmative defense, as contained in said answer, the

plaintiff denies the same, the whole and every part thereof, and each and every allegation therein contained; denies that the defendant at any time tendered to the plaintiff said sum of ONE HUNDRED THIRTY-SEVEN [37] and 50/100 (\$137.50) DOLLARS.

And now having fully replied to said answer of defendant, plaintiff prays for judgment as set forth in his complaint.

J. J. BRUMBACH and
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff,
617 Tacoma Bldg., Tacoma, Washington.
[Verified.]

[Endorsed]: "Filed in the U. S. District Court, Western District of Washington, Southern Division. Sep. 17, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [38]

Interrogatories.

The following interrogatories are hereby propounded to the plaintiff by defendant pursuant to Section 1226 of Remington and Ballinger's Annotated Codes and Statutes, which said interrogatories are filed for the discovery of facts material and necessary for the defendant to defend the above-entitled action:

Int. 1. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of five barrels of Old Crow Whiskey, and if so state where you purchased said whiskey and the name and address of the person, firm

or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 2. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of four barrels of Cedar Brook McBrayer's Whiskey, and if so state where you purchased said whiskey and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 3. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of three barrels of Green River Whiskey, and if so state where you purchased said whiskey and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 4. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of three barrels of Penwick Rye, and if so state where you purchased said Penwick Rye and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 5. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of one barrel of Old Crow Whiskey (1899), and if so state where you purchased said whiskey and the name and address of the person,

firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 6. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of one barrel of Fox Mountain Whiskey (1896), and if so state where you purchased said whiskey and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 7. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of one barrel of A. G. McBrayer's Whiskey and if so state where you purchased said whiskey and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor. [39]

Int. 8. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of one barrel of Wictlow Whiskey, and if so state where you purchased said whiskey and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 9. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of one barrel of California port wine, and if so state where you purchased said wine and the name and address of the person, firm

or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 10. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of one-half barrel Imported Port Wine, and if so state where you purchased said wine and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 11. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of a barrel and a half of California brandy, and if so state where you purchased said brandy and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 12. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of a barrel and a half of Hudson Bay Rum, and if so state where you purchased said rum and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 13. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of two barrels of Clark Bros. Whiskey, and if so state where you purchased said whiskey and the name and address of the person, firm or corporation from whom you purchased the

same, the date of the purchase and the amount paid therefor.

Int. 14. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item 1600 Optimo Cigars, and if so state where you purchased said cigars and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 15. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of 500 Van Dyke Cigars, and if so state where you purchased said cigars and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 16. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based [40] consists of an item of 800 Manila Cigars, and if so state where you purchased said cigars and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 17. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of 800 El Rayo Cigars, and if so state where you purchased said cigars and the name and address of the person, firm or corporation from whom you purchased the same, and date of the purchase and the amount paid therefor.

Int. 18. State whether or not part of plaintiff's

claim for loss upon which the above-entitled action is based consists of an item of 900 Y. & B. Cigars, and if so state where you purchased said cigars and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase, and the amount paid therefor.

Int. 19. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of five barrels of bottled beer, and if so state where you purchased said beer and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 20. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of five cases of Joe Gideon's Whiskey, and if so state where you purchased said whiskey and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase, and the amount paid therefor.

Int. 21. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of twenty-two cases of Rocksberry Rye, and if so state where you purchased the same and the name and address of the person, firm or corporation from whom you purchased said rye, the date of the purchase and the amount paid therefor.

Int. 22. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of four cases of Old Crow

44 Central National Fire Ins. Co. of Chicago, Ill.

Bourbon Whiskey, and if so state where you purchased the same and the name and address of the person, firm or corporation from whom you purchased said whiskey, the date of the purchase and the amount paid therefor.

Int. 23. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of four cases of Guggenheimer Whiskey, and if so state where you purchased said whiskey, and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 24. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based [41] consists of an item of four cases of Hermitage Whiskey, and if so state where you purchased said whiskey, and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 25. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of four cases of Gibson Rye, and if so state where you purchased said rye and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 26. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of three cases of Atherton Whiskey, and if so state where you purchased said

whiskey and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 27. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of two cases of Pebbleford Whiskey, and if so state where you purchased said whiskey and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 28. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of two cases of McBrayer's Whiskey, and if so state where you purchased said whiskey and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

29. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of four cases of W. H. Lacey's Whiskey, and if so state where you purchased said whiskey and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

30. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of two cases of Yellowstone Whiskey, and if so state where you purchased said

whiskey and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

31. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of two Gordon Whiskey, and if so state where you purchased said whiskey and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

32. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of 15 cases of Jel Razier Whiskey, and if so [42] state where you purchased said whiskey and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 33. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of two cases of Pine Apple Rock Rye, and if so state where you purchased the same and the name and address of the person, firm or corporation from whom you purchased it, the date of the purchase and the amount paid therefor.

Int. 34. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of two cases of Claret wine, and if so state where you purchased the said wine and the name and address of the person, firm or corporation from whom you purchased the same, the

date of the purchase and the amount paid therefor.

Int. 35. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of one case Benedictine (Imported), and if so state where you purchased the same and the name and address of the person, firm or corporation from whom you purchased it, the date of the purchase and the amount paid therefor.

Int. 36. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of two cases of Muscat wine, and if so state where you purchased the said wine and the name and address of the person, firm or corporation from whom you purchased it, the date of the purchase and the amount paid therefor.

Int. 37. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of two cases of Angelica wine, and if so state where you purchased said wine, and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 38. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of four cases of Cresta Blanca Wine, and if so state where you purchased said wine, and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 39. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is

based consists of an item of two cases of Sparkling Burgundy (Pints), and if so state where you purchased said wine and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor.

Int. 40. State whether or not part of plaintiff's claim for loss upon which the above-entitled action is based consists of an item of two cases Sparkling Burgundy (quarts), and if so state where you purchased said wine and the name and address of the person, firm or corporation from whom you purchased the same, the date of the purchase and the amount paid therefor. [43]

41. State the name of the person, firm or corporation from whom you purchased all other goods upon which the above-entitled action is based and for which a claim of loss is made not heretofore covered by these interrogatories, and the date upon which the same was purchased, together with the purchase price thereof.

42. State the names and addresses of all persons, firms or corporations from whom you purchased goods for your saloon at Long Beach, Washington.

COLE & COLE and
W. F. MAGILL,
Attorneys for Defendant.

[Verified.]

[Endorsed]: "Filed in the U. S. District Court, Western District of Washington. May 13, 1913. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." [44]

**Plaintiff's Answer to Interrogatories Propounded
by Defendant.**

State of Washington,
County of Pacific,—ss.

William Black, being sworn, on oath deposes and states that he is the above-named plaintiff, in the above-entitled cause of action, now pending in the above-named court; that in answer to the interrogatories propounded to him, and filed in said cause, he respectfully submits the following, to wit:

1. Answering interrogatory 1 thereof, he states that part of plaintiff's claim, upon which the above-entitled action is based, consisting of five barrels of Old Crow Whiskey, that he purchased the same from Blumaur & Hock, of Portland, whose postoffice address is Portland, Oregon; that as to the date of said purchase, and the amount paid, plaintiff has not sufficient data or memory to state, for the reason that his books and copies of inventories were destroyed and lost by having burned in the building where said stock was kept.

2. Answering interrogatory 2 thereof, he states that part of plaintiff's claim, upon which the above-entitled action is based, consists of four barrels of Cedar Brook McBrayer's Whiskey; that he purchased the same from Julius Kesler, of _____, whose postoffice address is _____; that as to the date of said purchase, and the amount paid therefor, plaintiff has not sufficient data and memory to state, for the reasons stated in answer to paragraph or interrogatory 1 herein.

3. Answering interrogatory 3 thereof, he states that part of plaintiff's claim, upon which the above-entitled action is based, consists of three barrels of Green River Whiskey, that [45] he purchased the same from Blumaur & Hoch, of Portland, Oregon, whose postoffice address is Portland, Ore.; that as to the date of said purchase, and the amount paid, plaintiff has not sufficient data and memory to state, for the reasons stated in answer to interrogatory herein.

4. Answering interrogatory 4 thereof, he states that part of plaintiff's claim, upon which the above-entitled action is based, consists of three barrels of Penwick Rye Whiskey; that he purchased the same from Blumaur & Hock, Portland, Oregon, whose postoffice address is Portland, Ore.; that as to the date of said purchase, and the amount paid therefor plaintiff has not sufficient data and memory to herein state, for the reasons stated in answer to interrogatory 1 herein.

5. Answering interrogatory 5 thereof, he states that part of plaintiff's claim, upon which the above-entitled action is based, consists of one barrel of Old Crow Whiskey (1899); that the same was purchased from Chevalier & Company, of San Francisco, California, whose postoffice address is San Francisco, California; that as to the date of said purchase and the amount paid therefor, plaintiff has no sufficient data and memory to state, for the reasons stated *so* interrogatory 1 herein.

6. Answering interrogatory 6 thereof, he states that part of plaintiff's claim, upon which the above-

entitled action is based, consists of the item of one barrel of Fox Mountain Whiskey (1896); that the same was purchased from Brown Foreman Company, of Louisville, Ky., whose postoffice address is Louisville, Ky.; that as to the date of said purchase and the amount paid therefor, plaintiff has not sufficient data to state for the reasons stated in interrogatory 1 herein.

7. Answering interrogatory 7 thereof, he states, [46] that part of plaintiff's claim, upon which this action is based, consists of the items of two barrels of A. G. McBrayer's Whiskey; that the same was purchased from Greenbaum Bros., of Louisville, Ky., whose postoffice address is Louisville, Ky.; that as to the date of said purchase and the amount paid therefor plaintiff has not sufficient data or memory to state, for the reasons stated to interrogatory 1 herein.

8. Answering interrogatory 8 thereof, he states that part of plaintiff's claim, upon which the above-entitled action is based, consists of the item of one barrel of Wictlow Whiskey; that the same was purchased from Greenbaum Bros., of Louisville, Ky., with postoffice address, Louisville, Ky.; that as to the date of said purchase and the amount paid therefor, plaintiff has not sufficient data or memory to state, for the reasons stated to interrogatory 1 herein.

9. Answering interrogatory 9 thereof, he states that part of plaintiff's claim, upon which the above-entitled action is based, consists of one barrel of California port wine; that he has no data of whom

the same was purchased, or the price paid therefor, for the reasons stated to interrogatory 1 herein.

10. Answering interrogatory 10 thereof, he states that part of plaintiff's claim, upon which the above-entitled action is based, consists of the item of one-half barrel of Imported Port wine; that the same was purchased from De Fremery & Company, of San Francisco, Cal., whose postoffice address is San Francisco, Cal.; that as to the date of said purchase and the amount paid therefor, plaintiff has not sufficient data or remembrance to state for the reasons stated to interrogatory 1 herein.

11. Answering interrogatory 11 thereof, he states that part of plaintiff's claim, upon which the above-entitled action [47] is based, consists of the item of one-half barrel of California Brandy; that he has no data of whom the same was purchased or the price paid therefor, for reasons stated to interrogatory 1 herein.

12. Answering interrogatory 12 thereof, he states that part of plaintiff's claim upon which the above action is based, consists of the item of one-half barrel of Rum (Hudson Bay); that the same was purchased from Fleckenstein & Company, of Portland, Ore., whose postoffice address is Portland, Ore.; that as to the date of said purchase and the amount paid therefor, plaintiff has not sufficient data or remembrance to state, for the reasons stated to interrogatory 1 herein.

13. Answering interrogatory 13 thereof, he states that part of plaintiff's claim, upon which the above-

entitled action is based, consists of the items of two barrels of Clark Bros. Whiskey; that the same was purchased from said company's Distillery, Peoria, Illinois, postoffice address, Peoria, Ill.; that as to the date of said purchase, and the amount paid therefor, plaintiff has no sufficient data or remembrance to state, for reasons stated to interrogatory 1 herein.

14. Answering interrogatory 14 thereof, he states that part of plaintiff's claim, upon which the above-entitled action is based, consists of 1600 Optimo Cigars; that the same was purchased from Hart Cigar Company, of Portland, Ore., and others whose postoffice address, as to said Hart Cigar Company, is Portland, Ore., otherwise unknown; that as to the date of said purchase, and the amount paid therefor, plaintiff has no sufficient data or remembrance to state, for reasons stated to interrogatory 1 herein.

15. Answering interrogatory 15 thereof, he states [48] that part of plaintiff's claim, upon which the above-entitled action is based, consists of the item of 500 Van Dyke Cigars; that the same was purchased from M. A. Gunst & Co., of Portland, Ore., and others; that the postoffice address of said Gunst & Co. is Portland, Ore., otherwise unknown; that as to the date of said purchase and the amount paid therefor, plaintiff has no sufficient data or remembrance to state, for the reasons stated to interrogatory 1 herein.

16. Answering interrogatory 16 thereof, he states that part of plaintiff's claim, upon which the

above-entitled action is based, consists of the item of 800 Manila Cigars; that the same was purchased from Hart Cigar Company, of Portland, Ore., and Woolley & Co., of Seattle, Wash., whose address is said Portland, Ore., and Seattle, Wash.; that as to the date of purchase and the amount paid therefor, plaintiff has no sufficient data or remembrance to state for the reasons stated in interrogatory 1 herein.

17. Answering interrogatory 17 thereof, he states that part of plaintiff's claim, upon which the above-entitled action is based, consists of the item of 800 El Rayo cigars; that the same was purchased from Campbell & Evans, of Portland, Ore., whose postoffice address is Portland, Ore., that as to the date of said purchase and the amount paid therefor, plaintiff has no sufficient data or remembrance to state, for the reasons stated in interrogatory 1 herein.

18. Answering interrogatory 18 thereof, he states that part of plaintiff's claim, upon which the *above-entitled* is based, consists of the item of 900 Y. & B. cigars; that the same was purchased from Mason & Erwin Co., of Portland, Ore., whose post-office address is Portland, Ore.; that as to the date of said purchase and the amount paid therefor, plaintiff has no sufficient data [49] or remembrance to state, for the reasons stated in interrogatory 1 herein.

19. Answering interrogatory 19 thereof, he states that a part of plaintiff's claim, upon which the above-entitled action is based, consists of the

item of five barrels of bottled beer; that the same was purchased from Wienhardt's Brewery of Portland, Ore., and the North Pacific Brewery, of Astoria, Ore.; whose postoffice addresses are Portland, Ore., and Astoria, Ore., that as to the date of said purchase and the amount paid therefor, plaintiff has no sufficient data or remembrance to state, for the reasons stated in interrogatory 1 herein.

20. Answering interrogatory 20 thereof, he states that a part of plaintiff's claim upon which the above-entitled action is based, consists of the item of five cases of Joe Gideon Whiskey; that the same was purchased from Greenbaum Bros., of Louisville, Ky., whose postoffice address is Louisville, Ky.; that as to the date of said purchase and the amount paid therefor, plaintiff has no sufficient data or remembrance to state, for the reasons stated in answer to interrogatory 1 herein.

21. Answering interrogatory 21 thereof, he states that a part of plaintiff's claim upon which the above-entitled action is based, consists of the items of twenty-two cases of Roxbury Rye Whiskey; that the same was purchased from Bluthenthal & Beckart, of Baltimore, Md., whose postoffice address is Baltimore, Md.; that as to the date of said purchase and the amount paid therefor, plaintiff has not sufficient data or remembrance to state, for the reasons stated in answer to interrogatory 1 herein.

22. Answering interrogatory 22 thereof, he states that a part of plaintiff's claim upon which the above-entitled action is based, consists of the item of four cases of 'Old Crow' [50] Bourbon Whis-

key; that the same was purchased from Blumaur, Hock, of Portland, Ore., whose postoffice address is Portland, Ore.; that as to the date of said purchase and the amount paid therefor, plaintiff has not sufficient data or remembrance to state, for the reasons stated in answer to interrogatory 1 herein.

23. Answering interrogatory 23 thereof, he states that a part of plaintiff's claim upon which the above-entitled action is based consists of the item of four cases of Guggenheimer Whiskey; that the same was purchased from Rothchild Bros., of Portland, Ore., whose postoffice is Portland, Ore.; that as to the date of said purchase and the amount paid therefor plaintiff has not sufficient data or remembrance to state, for the reasons stated in answer to interrogatory 1 herein.

24. Answering interrogatory 24 thereof, he states that a part of the plaintiff's claim upon which the above-entitled action is based, consists of the item of four cases of Hermitage Whiskey; that the same was purchased from Rothchild Bros., of Portland, Ore., whose postoffice address is Portland, Ore.; that as to the date of said purchase and the amount paid therefor plaintiff has not sufficient data or remembrance to state, for the reasons stated in answer to interrogatory 1 herein.

25. Answering interrogatory 25 thereof, he states that a part of plaintiff's claim upon which the above-entitled action is based consists of the item of four cases of Gibson Rye Whiskey; that the same was purchased from James De Fremery, of San Francisco, Cal., whose postoffice address is San Fran-

cisco, Cal.; that as to the date of said purchase and the amount paid therefor, plaintiff has not sufficient data or remembrance to state, for the reasons stated in answer to interrogatory 1 herein. [51]

26. Answering interrogatory 26 thereof, he states that a part of the plaintiff's claim, upon which the above-entitled action is based, consists of the item of three cases of Atherton Whiskey; that the same was purchased at sheriff's sale at Long Beach, Wash., during the latter part of 1911, with other stock of A. B. Nye & Co.; that plaintiff has no data or remembrance of the amount paid therefor, for reasons stated in answer to interrogatory 1 herein.

27. Answering interrogatory 27 thereof, he states that a part of plaintiff's claim, upon which the above-entitled action is based, consists of the item of two cases of Pebbleford Whiskey; that the same was purchased from John Eckland, of Portland, Ore., whose postoffice address is Portland, Ore.; that as to the date of said purchase and the amount paid therefor, plaintiff has no sufficient data or remembrance to state, for the reasons stated in answer to interrogatory 1 herein.

28. Answering interrogatory 28 thereof, he states that a part of the plaintiff's claim upon which the above-entitled action is based consists of two cases of McBrayer's Whiskey; that the same was purchased during the latter part of 1911 at sheriff's sale with the other stock of A. B. Nye & Co.; that plaintiff has no data or remembrance of the amount paid therefor, for reasons stated in answer to interrogatory 1 herein.

29. Answering interrogatory 29 thereof, he states that a part of the plaintiff's claim upon which the above-entitled action is based consists of four cases of W. H. Lacey's Whiskey; that the same was purchased from W. J. Van Schuyver & Company, of Portland, Ore., whose postoffice address is Portland, Ore.; that as to the date of said purchase and the amount paid therefor, plaintiff has no data or remembrance sufficient to state, for [52] reasons stated in answer to interrogatory 1 herein.

30. Answering interrogatory 30 thereof, he states that a part of the plaintiff's claim upon which the above-entitled action is based, consists of the item two cases of Yellowstone Whiskey; that the same was purchased from Rothchild Bros., of Portland, Ore., whose postoffice address is Portland, Ore.; that as to the date the same was purchased and the amount paid therefor, plaintiff has no data or remembrance sufficient to state, for reasons stated in answer to interrogatory 1 herein.

31. Answering interrogatory 31 thereof, he states that a part of the plaintiff's claim, upon which the above-entitled action is based, consists of the item of two cases of Gordon Gin; that plaintiff has no data or remembrance of whom it was purchased or the amount paid therefor, for the reasons heretofore stated in answer to interrogatory 1 herein.

32. Answering interrogatory 32 thereof, he states that a part of the plaintiff's claim, upon which the above-entitled action is based, consists of the item of fifteen cases of Joel B. Frazier's Whiskey; that the same was purchased from James De

Fremery & Co. of San Francisco, Cal.; that as to the date of said purchase and the amount paid therefor, plaintiff has no data or remembrance sufficient to state, for the reasons stated in his answer to interrogatory 1 herein.

33. Answering interrogatory 33 thereof, he states that a part of the plaintiff's claim, upon which the above action is based, consists of the item of two cases of Pine Apple Rock Rye; that the same was purchased from J. J. Haggerty & Co., formerly of Seattle, Wash.; said J. J. Haggerty's postoffice address is Raymond, Wash.; that as to the date of said purchase and the amount paid therefor plaintiff has no data or remembrance [53] sufficient to state, for the reasons heretofore stated in his answer to interrogatory 1 herein.

34. Answering interrogatory 34 thereof, he states that a part of plaintiff's claim upon which the above action is based consists of the item of two cases of Claret wine; that the same was purchased from Bontherford, of Portland, Ore.; that as to the date of said purchase and the amount paid therefor plaintiff has no data or remembrance sufficient to state, for the reasons stated in his answer to interrogatory 1 herein.

35. Answering interrogatory 35 thereof, he states that a part of plaintiff's claim upon which the above-entitled action is based, consists of an item of one case of Benedictine (Imported), which was purchased with the saloon and stock, in Ilwaco, Wash.; that he has no data or knowledge of the parties from whom it was purchased, or the amount paid there-

for, and is therefore unable to answer the same.

36. Answering interrogatory 36 thereof, he states that a part of plaintiff's claim, upon which the above-entitled action is based, consists of two cases of Muscat wine; that the same was purchased from Jas. De Fremery, of San Francisco, Cal., and whose postoffice address is San Francisco, Cal.; that as to the date of said purchase and the amount paid therefor plaintiff has no data or remembrance sufficient to state for the reasons stated in his answer to interrogatory 1 herein.

37. Answering interrogatory 37 he states that a part of plaintiff's claim, upon which the above-entitled action is based, consists of two cases of Angelica wine; that the same was purchased from Jas. De Fremery, as stated in answer to interrogatory 36 above; that as to the date of the purchase and [54] the amount paid therefor, plaintiff has no data or remembrance sufficient to state for the reasons stated in his answer to interrogatory 1 herein.

38. Answering interrogatory 38 thereof, he states that a part of plaintiff's claim, upon which the above-entitled action is based, consists of four (4) cases of Cresta Blanca wine; that the same was purchased either from Brown, Foreman, of San Francisco, Cal., or from Blumaur & Hock of Portland, Ore., whose postoffice addresses are respectively at said places; that as to the date of purchase and the amount paid therefor, plaintiff has no data or remembrance sufficient to state for the reasons stated in his answer to interrogatory 1 herein.

39. Answering interrogatory 39 thereof, he states that a part of plaintiff's claim, upon which the above-entitled action is based, consists of two cases of Sparkling Burgundy (pints); that the same was purchased from the same firms named in answer to interrogatory 38 herein; that as to the date of purchase and the amount paid therefor, plaintiff has no data or remembrance sufficient to state, for the reasons stated in his answer to interrogatory 1 herein.

40. Answering interrogatory 40 thereof, he states that a part of plaintiff's claim, upon which the above-entitled action is based, *consists the* item of two cases of Sparkling Burgundy (quarts); that the same was purchased from the firms named in his answer herein to interrogatory 38 hereinbefore; that as to the date of purchase or the amount paid therefor plaintiff has no data or remembrance thereof sufficient to state, for the reasons stated to his answer to interrogatory 1 herein.

41. Answering interrogatory 41 thereof, he states to the best of his recollection and memory that the names of [55] other persons, firms or corporations, from whom he has purchased all other goods, upon which the above-entitled action is based, and for which a claim of loss is made are as follows, to wit: Old Kentucky Distillery Company, of Louisville, Kentucky; Sherwood & Company, Importers, of San Francisco, California; Henry Flecenstein Company, of Portland, Oregon; F. Zimmerman & Company, of Portland, Oregon; Bonney Bros., Distillers, of Louisville, Kentucky; Sunny Brook Dis-

tilling Co., and numerous other parties, who have not heretofore been mentioned in the interrogatories herein; that the dates of said purchases and the amounts paid therefor plaintiff has no data or remembrance sufficient to base a statement thereof, for the reasons stated in his answer to interrogatory 1 herein.

42. Answering interrogatory 42 thereof, he states, that he has no book account or invoices, original or copies thereof, of the goods he purchased for his saloon at Long Beach, Wash., because the same were destroyed when his saloon building was burned with all its contents; that he has to *reply* upon casual memory, and that he has hereinbefore given the names of the persons, firms, and corporations that he has dealt with and purchased goods from, from his best present recollection, and that therefore he refers to the said names and *post* addresses hereinbefore stated as his answer to said interrogatory 42 herein.

WILLIAM BLACK.

Subscribed and sworn to before me this 2d day of June, 1913.

[Seal] J. J. BRUMBACH,
Notary Public for the State of Washington, Resid-
ing at Ilwaco, in Said State. [56]

[Endorsed]: "Filed in the U. S. District Court,
Western District of Washington, Southern Division,
Sep. 16, 1913. Frank L. Crosby, Clerk. By F. M.
Harshberger, Deputy." [57]

[Stipulation [as to Tender of Insurance Premium].

It is hereby stipulated and agreed by and between the plaintiff and defendant in the above-entitled action, by their respective attorneys, that the insurance premium of \$137.50, received from William Black as premium on Policy No. 590,757, dated June 18, 1912, given to William Black by the Central National Fire Insurance Company, of Chicago, covering his stock of liquors, wines, cigars, beer, soda and mineral waters at Long Beach, Washington, being the policy upon which the above action is brought, was tendered to J. J. Brumbach, of Ilwaco, Washington, on or about the 25th day of March, 1913, and prior to the filing of defendant's answer in the above action, and was refused by him.

COLE & COLE,
Attorneys for Defendant.

J. J. BRUMBACH,
Attorney for Plaintiff.

[Endorsed]: "Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 23, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [58]

Verdict.

We, the jury in the above-entitled cause, find for the plaintiff, and assess his damages at the sum of Five Thousand Dollars (\$5,000.00).

ROBERT DORAGH,
Foreman.

[Endorsed]: "Filed in the U. S. District Court,
Western Dist. of Washington, Southern Division.
Oct. 23, 1913. Frank L. Crosby, Clerk. By F. M.
Harshberger, Deputy." [59]

Judgment.

This cause coming on regularly to be heard before
the undersigned judge of the above-entitled court
on the 21st day of October, 1913, a jury of twelve
men having been duly and regularly impanelled and
sworn to try the issues in said cause, evidence both
oral and documentary having been introduced, and
said cause having been argued to the jury by coun-
sel for both plaintiff and defendant, and the jury
having been instructed by the Court, and having
retired to consider of their verdict, the said jury
did on the 23d day of October, 1913, return into
court with a verdict in which they found for the
plaintiff in the sum of FIVE THOUSAND and no
/100 (\$5,000.00) DOLLARS, and the Court having
considered the said verdict, and being duly advised
in all the premises; it is, now, therefore,

ORDERED, ADJUDGED and DECREED, that
the plaintiff, William Black, do have and recover
judgment of and from the defendant Central
National Fire Insurance Company of Chicago, Il-
linois, a corporation, in the sum of FIVE THOU-
SAND and no/100 (\$5,000.00) DOLLARS, with in-
terest thereon at the rate of 6% per cent per annum
from the 6th day of December, 1912; together with

his costs and disbursements taxed herein.

Done in open Court this 30th day of October, 1913.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: "Filed in the U. S. District Court,
Western Dist. of Washington, Southern Division.
Oct. 30, 1913. Frank L. Crosby, Clerk. By E. C.
Ellington, Deputy." [60]

Motion for New Trial.

Comes now the defendant in the above-entitled action and moves the Court for an order setting aside the judgment and verdict of the jury heretofore given and entered in the above-entitled cause, and granting a new trial for the following reasons materially affecting the substantial rights of the defendant:

- (1) Excessive damages appearing to have been given under the influence of passion and prejudice;
- (2) Error in the assessment of the amount of recovery, as the amount assessed was greater than the amount justified by the evidence;
- (3) Insufficiency of the evidence to justify the verdict;
- (4) That the verdict and judgment is against law;
- (5) Errors in law occurring at the trial and excepted to at the time by defendant;
- (6) Newly discovered evidence material for the defendant, which it could not, with reasonable dili-

gence, have discovered and produced at the trial.

COLE & COLE,
Attorneys for Defendant.

[Endorsed]: "Filed in the U. S. District Court,
Western Dist. of Washington. Nov. 15, 1913.
Frank L. Crosby, Clerk. By E. C. Ellington, De-
puty." [61]

Order Denying Motion for New Trial.

This cause coming on regularly to be heard upon the 24th day of November, 1913, upon the motion of the defendant for a new trial of the above-entitled action, Cole & Cole, attorneys for the defendant appearing in support of the motion, and J. J. Brumbach and Hayden, Langhorne & Metzger appearing in opposition thereto, and the Court being duly advised in all the premises, it is

ORDERED that the said motion be and the same is hereby denied, upon each and every of the several grounds, to which ruling the defendant excepted and his exception is hereby allowed.

Done in open court this 1st day of December, 1913.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: "Filed in the U. S. District Court,
Western Dist. of Washington, Southern Division.
Dec. 1, 1913. Frank L. Crosby, Clerk. By F. M.
Harshberger, Deputy." [62]

Order [Granting Defendant to January 10, 1914, to File Proposed Bill of Exceptions].

This matter being regularly before the Court upon the defendant's motion asking for further time to serve and file its proposed bill of exceptions, the Court after hearing, and being fully advised in the premises, does hereby

ORDER that the defendant be and it hereby is granted to and including January 10th, 1914, in which to serve and file its proposed bill of exceptions.

Done in open court this 23d day of December, A.D. 1913.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: "Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Dec. 23, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [63]

Bill of Exceptions.

BE IT REMEMBERED, That heretofore and on the 21st day of October, 1913, this cause came on duly and regularly for hearing before Honorable E. E. CUSHMAN, a Judge of the above-entitled Court, and a jury, whereupon the following proceedings were had and done, to wit:

[**Testimony of S. A. Madge, for Plaintiff.]**

S. A. MADGE, a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

My name is S. A. Madge. I reside at Olympia. Occupation, insurance. I have been in the insurance business for about five years. I was deputy insurance commissioner for four years. Prior to that time I was deputy collector of internal revenue. I ceased to be deputy of internal revenue about five years ago. I have been a resident of this State since 1892. During that time I was in business for myself before I went into the internal revenue service. I was acquainted with William Black. I must have been acquainted with him for ten or twelve years. I have been in his place of business at Long Beach, I think, once or twice. The last time was shortly before I went out of the service. It was about five years ago. Mr. Black formerly ran a saloon at Ilwaco. I was in his place of business there. He had two places; moved from the first place that he had into a new building. I was in both of those places at Ilwaco and I was in his place of business after he moved to Long Beach. I visited it in my official capacity as deputy collector of internal revenue.

It is the *deputy* of the deputy collector of internal revenue to visit saloons and all classes of people who hold [64] a special tax stamp to do business from the internal revenue department. When you go in there it is your business to see that the stock is kept in compliance with the law, and see that there is

(Testimony of S. A. Madge.)

no violation of the internal revenue law; that sometimes results in the necessity of testing goods. We have frequently to gauge the class of goods that he has.

Said witness further testified: [65]

Q. What I am getting at is what kind or character of goods did Mr. Black keep in his saloon if you know? A. Yes, sir; I do.

Mr. COLE.—We object to any testimony that this witness might give regarding the information that he derived as deputy collector of internal revenue on the ground that it is prohibited by the United States laws.

The COURT.—It is the Government's privilege and the privilege of the internal revenue officers themselves. Do you contend that it is a privilege of which you can take advantage?

Mr. COLE.—We subpoenaed Mr. Stit, a deputy revenue collector, and the internal revenue office here refused to let him testify, and it seems to me that— (interrupted).

The COURT.—Mr. Madge could claim his privilege, or he could be prevented by the Government from testifying, but that is nothing that the defense can avail itself of, as I understand, or unless you have some authorities where it has been held by the Federal courts that the testimony is not admissible on the ground of public policy and also the regulations of the treasury department. It is public policy to protect the United States Government in its source of revenue, but how you are interested is not

(Testimony of S. A. Madge.)

clear. Objection overruled. Exception allowed.

Q. Just tell the jury what kind and character of stock of liquors Mr. Black kept on hand.

A. Mr. Black—(interrupted).

Mr. COLE.—I object on the ground that it is not close enough, unless shown to be immediately preceding the fire.

The COURT.—The defendant is accused of fraud. Both the fact of the charge of fraud and the defense for the want of [66] fraud, depends more or less on circumstances, and this is admitted and your objection overruled on the ground that it is a circumstance from which the jury may infer either fraud or want of fraud.

Mr. COLE.—Our objection is that they can only show what stock he had immediately, or not very long prior to the fire.

The COURT.—Well, the Court does not conclude that this is so remote as to require that it be ruled out. Objection overruled. Exception allowed.

A. The stock of goods that he carried in Ilwaco, I remember very distinctly. I do not remember so distinctly about the stock of goods at Long Beach after he moved up there, but my impression is that it was the same stock of goods as the saloon in Ilwaco. The stock of goods,—it was a small town, and I was impressed with the stock of goods that he carried, because it was so far beyond the class of goods that are kept in saloons in towns of that size, that I make an inquiry, I think, and some investigation, to find why he was carrying a stock which was

(Testimony of S. A. Madge.)

all double-stamped goods. Double-stamped goods are straight distillery goods. I do not think he had,—my impression is that he did not have a barrel of blend,—he might have had one or two barrels of blend but I do not believe he had a barrel of rectified goods in the place. He carried a very high grade of liquors, Old Crow, Hermitage, Penwick Rye, and that class of goods. His bottled goods were, too. All bottled in bond, and he had quite a bit of re-imported goods. Re-imported goods is the finest goods that is carried, and he had goods, so [67] my recollection of the tests of them is, that they ran up,—I think he had one barrel that ran up to 120 proof, a very high grade of goods, and he had quite a stock of it; it was in barrels and the barrels were racked up, and the barrels were all tapped, and I tested quite a bit of it, because I felt it was my duty to do so, on account of the size of the town, but he gave me a very reasonable explanation of why he carried that class of goods in his place.

Q. Tell the jury.

A. I asked him how he came to carry a line of goods that were of that class, and he stated to me that when he first went into business there he discovered that all of the people coming down from Portland,—at that time the boats landed at the dock at Ilwaco, and the people going up to Long Beach on Fridays and Saturdays would bring along demijohns down with them, and he concluded—(interrupted).

Q. Right there, I want to ask you if Long Beach is a summer resort?

(Testimony of S. A. Madge.)

A. Yes, sir, and people come down,—(interrupted).

Q. And people come down from Portland and go over there to spend Sundays?

A. Yes, sir; and they pass his place of business carrying their demijohns and he concluded that if he would put in a different line of goods, fill his cases with good goods, that he would get that trade,—(interrupted).

Mr. COLE.—I object to that.

Objection sustained. [68]

Q. That is far enough on that. You spoke about double-stamped goods. Maybe some of the jurors do not know what double-stamped goods is. You have been in the revenue service. Please tell them.

A. Double-stamped goods is straight distillery goods. It is shipped from a bonded warehouse, carrying a double stamp, never having been touched in any way.

Q. What about its cost? The cost of double-stamped goods?

A. It depends on the age of the goods. Some double-stamped goods are not very good goods, that is, some distilleries do not put out as good goods as others; it depends on the age of the goods.

Q. What do you know about the age of Mr. Black's goods?

A. Well, he had some very old liquors, re-imported goods; re-imported goods are goods that are taken across the water and brought back here to increase the quality of the liquor. That is the purpose

(Testimony of S. A. Madge.)

of sending it across and back. They are sent over to Europe and brought back here for the purpose of giving them a sea voyage.

Q. Do you know something about the cost of such goods, the value of such goods, such liquor?

A. Yes, sir.

Q. Do you know about what they cost per gallon, barrel, etc.?

A. Well, Old Crow would cost in the neighborhood of,—three-year old, when it would be put out of bond, would cost in the neighborhood of three to four and a half a gallon; that is the younger age.

Q. For instance, if a person kept that for several years, supposing he got a barrel of these double-stamped goods [69] in 1903 and it cost three or four and a half a gallon, what would be its value six or seven years later?

Mr. COLE.—I object to this evidence on the ground that the witness is not qualified to give it, and I move that the last answer be stricken.

Objection overruled. Motion denied. Exceptions allowed.

A. Those goods would be worth from seven to ten dollars a gallon; if ten years old, it is worth seven dollars, and some of it ten dollars, and Old Crow, I think, would be worth at least ten dollars a gallon, ten years old.

Q. What is liquor worth that is six years old?

A. It would be worth five or six dollars a gallon. It is a lot owing to the amount of absorption, the amount of liquor lost. Some barrels will char

(Testimony of S. A. Madge.)

quicker than others, and the proof will run up higher; that means there is a loss of quantity in the barrel and a higher proof.

Q. Did you find Mr. Black's saloon any different from the general run of saloons, about carrying fine liquors? A. Yes, sir.

Q. What was the difference?

A. Well, it was a higher class saloon.

Q. What was the condition of the stock as being well supplied or meagerly supplied?

A. Oh, he had a large supply of liquors.

Q. How about the cigars, if you know?

A. Well, I do not distinctly remember, although I think he kept a pretty fair supply of cigars; that is my impression.

Q. You spoke a moment ago about the fact that he did not [70] carry rectified goods. What do you mean by rectified goods?

A. Rectified goods are compounded goods. Certain wholesalers and rectifiers have a license to rectify goods, and they take alcohol and green whiskey and mix them together, putting water in and bring the proof down to about sixty or eighty-five, somewhere along there, and put coloring matter in there, and sometimes caramel, to give it a mellow taste.

Q. You say there was none of that kind of goods in his place?

A. I do not think he had a single bit of rectified goods in his place.

Q. You spoke of the bottled goods being double-

(Testimony of S. A. Madge.)

stamped goods, bottled in bond?

A. Yes, sir. I think all of his goods were bottled in bond.

Q. What do you mean to—what did that signify to a man who understands?

A. They are bottled under Government supervision at the bonded warehouses at the distilleries, and they are bottled at 100 proof and the Government stamp is put over the cork. There is a very heavy penalty for refilling any of these bottles. It is our duty to see that none of these bottles are refilled.

Q. What,—you—were these liquors you spoke of, were they in Mr. Black's saloon in Ilwaco?

A. Yes, sir; they were.

Cross-examination.

(By Mr. COLE.)

Q. When was the last time you were in Mr. Black's saloon?

A. Just about five years ago. I was in his saloon, I think [71] only once after he moved up to Long Beach.

Q. That was the same year that he moved up to Long Beach, was it? A. Yes, sir; I think it was.

Q. That was in 1908? A. Yes, sir; in 1908.

Mr. COLE.—I move that all of the testimony of this witness be stricken out on the ground that it is too remote from the time of the fire.

The COURT.—Motion denied. Exception allowed. Gentlemen of the jury, you will understand that this fire is alleged to have occurred in June, 1912,

(Testimony of S. A. Madge.)

and this evidence concerning the character of the stock of goods that the plaintiff carried is admitted simply as a circumstance from which you are to determine the class of business that he was conducting, as rendering it reasonable or unreasonable that he continued to carry valuable or cheap goods, as contended by one side or the other.

Q. You know nothing whatever as to the quality or quantity of goods he had on hand at the time of the fire, do you?

A. Nothing at all,—I say nothing,—personally, I do not. As deputy insurance commissioner this matter was brought to my attention by Mr. Black, and I think I had some dealings with the company about it, that is the only knowledge I have.

Q. You have no knowledge yourself?

A. No, sir; none whatever.

Q. Now, I will ask if he had any Old Crow on hand at the time you were down there?

A. Yes, sir; he did. [72]

Q. Do you know where he bought it?

A. No, sir; I do not.

Q. I believe you testified on direct examination also that the barrels were all tapped?

A. I think nearly every barrel that he had was tapped. He may have had one or two new barrels in there at different times when I was there that had not been tapped, but, ordinarily, he had them all tapped.

Q. What do you mean when you say that this whiskey was all bought in bond?

(Testimony of S. A. Madge.)

A. I took it that it came direct from the bonded warehouse. He might have bought it from an agent or anyone else, but it is shipped direct from the distillery warehouse. They ordinarily buy in large quantities, from ten to twenty barrels, and then have it shipped as they want it.

Q. If this liquor was shipped to a wholesale house in Portland, you would not say that it was bought in bond?

A. If it was shipped from the bonded warehouse to Portland, and then reshipped from there, of course, it would not be bought in a bonded warehouse.

Q. You would not say it was bought in bond under those circumstances? A. Oh, no.

Q. In regard to the age of this liquor, is it not a fact that the evaporation and the decrease in the quantity of liquor offsets the decrease,—in other words, if liquor is three years old, a barrel is not worth more than when it is first taken out of bond?

A. Oh, yes, it is. If the evaporation is only a few gallons, the increase is quite rapid, it is doubled, almost. [73]

Q. There would be evaporation of several gallons in old liquor? A. Yes, sir.

Q. And the increase in price,—but that would more than offset the decrease in the quantity in the barrel? A. Oh, yes; undoubtedly.

Q. This evaporation takes place on account of the wooden barrels? A. Yes, sir.

Q. Do you know about what percentage this

(Testimony of S. A. Madge.)

liquor increases per year?

A. Increases per year in value, do you mean?

Q. Yes.

A. No, sir, I could not,—it would depend entirely on the test of the liquor, as to how much evaporation there was.

Q. Is it not a fact that some liquor eight or ten years old may not be worth any more than it was when it was barrelled?

A. Oh, no; if it is kept in the barrel; it is bound to increase in value.

Q. Is it not a fact that the price of that old liquor depends on the amount on hand, the amount in the market? A. What is that?

Q. Is it not a fact that the price of that old liquor depends on the amount of goods that is on the market?

A. I presume that would have some effect on the price of it, although—(interrupted).

Q. Supposing a lot of goods, seven or eight year old goods were on the market, would that make a difference in the value?

A. I think it would. [74]

Q. Supposing quite a lot of 1903 goods were on the market to-day, would not that have some effect on the price? A. I think so, if it was overstocked.

Q. You thought that Old Crow five or six years old is worth five or six dollars a gallon?

A. Yes, sir.

Q. What is that worth when taken out of bond?

A. Depends on when it is taken out. It has got to

(Testimony of S. A. Madge.)

be two years old, and it has got to be taken out when it is eight years old. It depends on the—it would depend on when it was taken out. If taken out when young and green, it is not worth as much as when it is allowed to mature.

Q. Now, is it not a fact that this liquor that is taken out of bond does not increase in value much in the first three years?

A. Yes; of course, it would depend on the warehouse. The Sunnybrook whiskey, I think, they keep their goods in a heated warehouse, with the result that in three years you get Sunnybrook that is 109 proof. I do not know any other distillery that uses that method.

Q. Take a whiskey and give it an ocean voyage, as you said, and in a few months you have a whiskey that is eight or ten years old?

A. It ages quite rapidly, because it gives it a great,—the action of the boat keeps it all stirred up all the time, and then when it settles, of course, it is the same as if it had been standing for some time. It ages it.

Q. That is the cheapest way to give it age?

A. Yes, sir; that is the cheapest way to give it age,—I [75] believe that is the cheapest way to give it age.

Q. You do not know whether his whiskey was aged by water or Father Time?

A. Some of it was aged by water and time both,—some of it was reimported. He had two barrels there,—I am not a drinking man at all; I very seldom

(Testimony of S. A. Madge.)

take a drink, but I have taken a drink of that liquor.

Q. You think the decrease in the quantity of the liquor would not offset the increase in quality?

A. No, sir; not in price.

Q. But it would nearly offset it?

A. No, sir; I would not think so.

Q. Supposing you bought a barrel of liquor in 1908 and kept it three years, and it cost you, we will say, a hundred dollars a barrel, what would that be worth if kept in wood at the end of three years?

A. About a hundred and eighty dollars.

Q. About a hundred and eighty dollars?

A. Yes, sir; on the same basis.

Q. You gain almost twenty-five per cent a year, would you? A. Yes, sir.

Q. That is a pretty good investment?

A. It is a pretty good investment, and that is the way the better saloon keepers make their investments. They buy their goods in bond, two or three years old, and leave it there and take it out as they want it; they leave it there five or six years, or seven years; buy twenty or forty barrels of liquor in bond.

Q. You do not mean to tell this jury that a barrel of whiskey increases eighty per cent in value in three years? [76]

A. No, sir; not eighty per cent in three years.

Q. A barrel of whiskey bought for one hundred dollars, you think is worth a hundred and eighty dollars in three years? Is it not a fact, that Mr. Black paid a hundred dollars a barrel for his Old Crow whiskey? A. I do not know.

(Testimony of S. A. Madge.)

Q. Do you know where he bought it?

A. No, sir; I do not.

Q. And I believe you testified that Old Crow from six to ten years old is worth seven to ten dollars a gallon? A. Yes, sir.

Q. That is wholesale? A. Yes, sir.

Q. Did you ever handle wholesale goods?

A. No, sir; I never handled liquors of any kind.

Q. You are not familiar with the value of whiskies?

A. I guess not now. I was at that time. I do not know how liquors are to-day, whether cheap or not.

Q. You never bought or sold liquors, of course?

A. No, sir; but I had occasion to ascertain the value of liquors when I was in the service.

Q. Did you give Mr. Black a wholesale liquor license?

A. We gave Mr. Black a malt liquor license, if I remember, now.

Q. Did you ever have anything to do with arresting him or fining him? A. No, sir; I never did.

Q. You issued Mr. Black a wholesale malt liquor license?

Mr. LANGHORNE.—I object to that as not proper cross-examination and immaterial and irrelevant.

Mr. COLE.—It certainly is material. If he made use of the [77] liquors he had on hand, we want to show something about his disposing of them.

Objection sustained. Exception allowed.

Q. I will ask you whether or not Mr. Black ever

(Testimony of S. A. Madge.)

sold any liquors at wholesale? Answer that question.

A. He,—(interrupted.)

Mr. LANGHORNE.—I object to that as immaterial and having no bearing upon the real issue, not cross-examination.

Objection sustained. Exception allowed.

Q. You say you do not know anything about the supply of cigars he had on hand?

A. Oh, just an indistinct remembrance. I would not want to testify as to his cigars.

Q. You said that he had no cheap goods. He had a few cheap goods on hand, didn't he? Didn't he have some Wicklow whiskey on hand?

A. I do not believe that he did in the Ilwaco store. My recollection is,—it is possible that he did have a barrel of it. I would not say for sure, but my recollection is that it was good grades all the way through.

Q. How many barrels of Old Crow did he have on hand?

A. I could not tell you that,—I could give it approximately,—no, I could not tell you.

Q. Do you know how many barrels of Hermitage?

A. No, sir.

Q. Did that come in bottles?

A. Mostly bottles.

Q. Do you know how many barrels of Green River he had, or did you see any?

A. I do not recall the Green River. I do not recall his having [78] any Green River at that time.

(Testimony of S. A. Madge.)

Q. He did not have any Penwick Rye Whiskey?

A. It seems to me he did.

Q. You would not say for sure, however?

A. Well, I am quite sure he did.

Q. How many barrels?

A. One barrel, is my recollection—(interrupted.)

Q. How is that?

A. I could not tell you the brands of that stock, but I have an indistinct recollection of the different lines of goods that he had, that is, a general remembrance of the stock, is all.

Q. You know of the high quality of the stock and that is about all you know about it?

A. Yes, the character of the goods he carried struck me as being remarkable.

Q. Being a good quality of goods?

A. Yes, sir; being a good quality of goods.

Q. As to the number of barrels or particular kind or the size of his stock, you have no information?

A. No, sir; the number of barrels or the size of the stock.

Q. What was the number of barrels?

A. He had, I would say, fifteen, possibly he had one or two racks, and he had possibly more, two or a third rack. I could not be positive about that, but there was two racks, I know, along the side of the room.

Q. They were all in the front room?

A. I think they were all in the front room; he might have had a few barrels untapped in the back room.

(Testimony of S. A. Madge.)

Q. Did you see any case goods at all? [79]

A. Do you mean bottled goods?

Q. Yes.

A. Oh, yes; he carried a large line of them.

Q. About how many cases?

A. Oh,—(interrupted).

Q. Do you think there were twenty-five?

A. Oh, more than that. He had a large line of case goods.

Q. You do not believe he had fifty?

A. I should say there were.

Q. You would not swear it was fifty, would you?
Do you mean that?

A. No, sir; I do not think I ever counted them, but I know he had a lot of them.

Q. The case goods were all in the back room?

A. No, sir; they were not; some of them were in the front room across, right straight across from the bar, I recollect, and then some back in the other end of the room. The case goods were on one side of the room and the barrel goods on the other.

Q. That is in the front room where the bar was?

A. Yes, sir. I am talking about the Ilwaco saloon. I am not talking about the Long Beach saloon. I have not a very distinct remembrance at that place.

Q. About how much would a barrel of liquor evaporate in eight years in wood?

A. Well, I do not know how much it would, probably,—in fact, I have forgotten at the present time; it has been so long since I have been in the service that I have forgotten.

(Testimony of S. A. Madge.)

Q. Supposing a man bought Old Crow Whiskey from the wholesaler instead of buying it in bond would you say that the value [80] of that liquor would increase,—(interrupted).

A. That would be exactly the same thing, whether it came from the bonded warehouse or the wholesaler, double-stamped goods cannot be touched,—(interrupted).

Q. Regardless of how old it was when it was bought? Does it go on increasing in the same proportion every year?

A. Oh, yes; in wood. If it is kept too long it will deteriorate instead of increasing.

Q. Is it not a fact that bottles or goods in glass deteriorate?

A. It does not deteriorate, but it does not increase at all.

Q. Would it deteriorate if kept in a warm room?

A. Yes, it might possibly, but I do not hardly think so. They remain about the same.

(Witness excused.) [81]

October 21st, 1913, 2:00 P. M.

Mr. LANGHORNE.—If the Court please, I would like to offer in evidence and read certain depositions. I am going to offer in evidence now the deposition of Robert L. Wolfler, a resident of Chicago, Illinois, which was taken upon stipulation.

Mr. COLE.—We took that deposition but I suppose it is admissible by either party.

The COURT.—It may be admitted.

Mr. LANGHORNE.—Gentlemen of the jury, I will now read to you the deposition of Mr. Robert L. Wolfler, a resident of Chicago, Illinois (reading):

[**Deposition of Robert F. Woelffer.]**

“Interrogatory Number 1. State your name and residence.

A. Robert F. Woelffer, 2426 Burling St., Chicago, Illinois.

Interrogatory Number 2. State what, if any, position you occupy with the firm of Julius Kessler & Company, of #337 West Madison Street, Chicago, Illinois.

A. I am secretary of Julius Kessler & Company, Inc., and as such I have access to all the records of the company.

Q. State whether or not the firm of Julius Kessler & Company ever sold and delivered to William Black, of Long Beach, Washington, five barrels of Cedar Brook McBrayer's whiskey. If so, state the date when said goods were sold and the price received therefor.

A. On or about April 2, 1910, Mr. E. G. Brown, a salesman, in the employ of Julius Kessler & Co., Inc., called upon William Black at his place of business at Long Beach, Washington, and sold him five barrels of McBrayer's Cedar Brook whiskey, for which warehouse receipt #42,848 was turned over to Mr. Black. These five [82] barrels were sold to Mr. Black in bond at \$1.05 per proof gallon contents original entry F. O. B. Distillery, and the total price

(Deposition of Robert F. Woelffer.)

of \$257.33 has been paid to Julius Kessler & Company; and Mr. Black was to order shipments of the whiskey as his business needs required. The five barrels sold Mr. Black were serial #72,263 and 72,264 and 72,265 and 72,266 and 72,267, and upon written instructions of Mr. Black one barrel serial #72,263 was withdrawn and shipped to Black at Long Beach, Washington, on or about April 30, 1910, and the four remaining barrels serial numbers 72,264 and 72,265 and 72,266 and 72,267 were withdrawn and shipped about December 29, 1910; and upon such withdrawal Mr. Black paid warehouse charges and Government tax, being \$39.55 on serial numbers 72,263 and \$159.34 on numbers 72,264 and 72,265 and 72,266 and 72,267.

Q. State whether or not the firm of Julius Kessler & Company ever sold and delivered to William Black any other goods. If so, state the dates and the price paid therefor.

A. We have no record of any other sale.

Q. State whether or not the freight on said goods was paid by the buyer or seller.

A. Bonded whiskey is sold F. O. B. Distillery and the buyer therefore paid the freight.

Q. State whether or not the price at which said goods were sold included the freight.

A. It did not.

Q. Produce and attach to your deposition and mark same Exhibit 'A' for identification, statement or duplicate invoices of all goods sold and delivered

(Deposition of Robert F. Woelffer.)

to William Black by the firm of Julius Kessler & Company.

A. Invoice is hereto attached dated April 29, 1910, for \$257.33 and marked Exhibit 'A' for identification; and [83] copies of tax statement by Mr. Black of Government tax and warehouse charges of \$39.55 on one barrel withdrawn April 30, 1910, is marked Exhibit 'B' for identification, and \$159.34 on four barrels withdrawn December 29, 1910, marked Exhibit 'C' for identification, are produced and attached herewith.

Cross-interrogatories.

Q. State whether said whiskey improves in quality and value by being aged in wood.

A. It does. Old goods being more mature are in more demand by reason of age and shrinkage and higher in price.

Q. State the value of said liquor at the present time so aged."

Mr. COLE.—That is objected to as being immaterial and irrelevant, on the ground that they are only entitled to recover on the value of the goods at the time of the fire, if they are entitled to recover at all, and not at the present time.

Mr. LANGHORNE.—It is not now the time to make objections to these interrogatories.

The COURT.—Read the stipulation.

Mr. LANGHORNE.—(Reading:) "It is hereby stipulated and agreed by and between the plaintiff and defendant in the above-entitled action, by their respective attorneys, as follows: That the deposition

(Deposition of Robert F. Woelffer.)

of Robert F. Woelffer, a resident of Chicago, Illinois, may be taken before John M. Quinlan, a notary public in and for the State of Illinois, residing at Chicago, Illinois, upon and pursuant to the interrogatories and cross-interrogatories hereto attached, at such place or places in the said city of Chicago, Illinois, as said notary public may designate; it is further stipulated and agreed that said [84] deposition may be taken at any time prior to the 1st day of October, 1913, by said notary, and that the taking of said deposition may be adjourned from time to time and place to place within said city of Chicago, Illinois, by said notary. It is further stipulated and agreed that all notice in regard to the time and place of taking said deposition, or the issuance of a commission therefor, is hereby expressly waived; that said deposition may be taken by said notary and by him forwarded to the clerk of the United States District Court at Tacoma, Washington, by mail or other means of conveyance. It is further stipulated and agreed that when said deposition is taken and completed it may be introduced in evidence at any trial of the above-entitled action by either of the parties hereto; all objection to the manner and form of taking said deposition, or of certifying or returning the same, is merely expressly waived; that the answers of the witness to said interrogatories may be taken down in shorthand or otherwise by said notary, or any person under his direction, and transcribed by said notary or person under his direction, before

(Deposition of Robert F. Woelffer.)
being signed by said witness.

(Signed) J. J. BRUMBACH,
Attorney for Plaintiff.
COEN COLE,
Attorney for Defendant."

The COURT.—Objection overruled. The jury will understand that it is the value of the property at the time of the fire that is the question that you are to determine, although this question is broader than that, and refers to a later time.

Mr. LANGHORNE.—(Reading:)

"Answer to Interrogatory Number 9. It is hard to state exactly the present value of the [85] goods sold Mr. Black as above; but I might say that the approximate value would be \$3.00 per gallon which amount would comprise the original cost to which must be added the Government tax, warehousing charges, freight, insurance and such other expenses as might have been incidental to the handling of the goods.

(Signed) ROBERT F. WOELFFER.

Subscribed and sworn to before me this 12 day of September, 1913."

I will offer in evidence, if the Court please, the deposition of J. Freedlund, taken under the same identical stipulation.

The COURT.—You may read it.

[**Deposition of Julius Friedland.]**

Mr. LANGHORNE.—(Reading:)

"Q. State your name, residence and business.

A. Julius Friedland; residence, 475 Salmon St.,

(Deposition of Julius Friedland.)

Portland, Oregon. My business is the liquor business.

Q. State what position you hold, if any, in the firm of Blumauer & Hoch.

A. Salesman for Blumauer & Hoch.

Q. State whether or not the firm of Blumauer & Hoch ever sold and delivered to William Black five barrels of Old Crow whiskey. If such sale was made state the date thereof, and the amount paid by Mr. Black for said goods.

A. Yes. We made that sale. Billed on June 26, 1909. \$535.00 F. O. B. Distillery at Frankfort, Kentucky.

Q. State whether or not the firm of Blumauer & Hoch ever sold and delivered to William Black three barrels of Green River whiskey. If such sale was made state the date thereof, and the amount paid by Mr. Black for said goods.

A. Yes. We sold him five barrels of Green River April 2, 1908; total amount, \$500.25, which would make three barrels about \$300.00.

Q. State whether or not the firm of [86] Blumauer & Hoch ever sold and delivered to William Black three barrels of Penwick Rye whiskey. If such sale was made state the date thereof, and the amount paid by Mr. Black for said goods.

A. Yes. On the same date. Five barrels amounting to \$509.75, April 2, 1908. Value of these three barrels would be about \$306.00.

Q. State whether or not the firm of Blumauer & Hoch ever sold and delivered to William Black four

(Deposition of Julius Friedland.)

cases of Old Crow Bourbon whiskey. If such sale was made state the date thereof, and the amount paid by Mr. Black for said goods.

A. Yes. On November 30, 1908, we sold him five cases of Old Crow of the value of \$65.00. Four cases would be worth \$52.00.

Q. Produce and attach to your deposition and mark same Exhibit 'A' for identification, duplicate invoices or statement of all goods which the firm of Blumauer & Hoch has sold and delivered to William Black, either at Ilwaco or Long Beach, Washington.

A. The said invoices are attached and marked Exhibit 'A' for identification.

Q. State whether or not the goods hereinbefore specifically mentioned were delivered to Mr. Black at Ilwaco, or Long Beach, Washington.

A. These five barrels of Green River and five barrels of Penwick Rye, invoice of April 2, 1908, were billed to Ilwaco, Washington, and the remainder to Long Beach. Shortly after the arrival of these goods Mr. Black moved to Long Beach.

Q. State whether or not the firm of Blumauer & Hoch ever received from William Black as credit on goods sold to him a twenty-five barrel certificate. If so, explain in detail what said certificate was.

A. Yes. We took from him a certificate for twenty-five [87] barrels of Sunnybrook whiskey on November 19, 1908, and gave him credit for \$1,029.37. The above certificate called for twenty-five barrels of Sunnybrook whiskey in bond at the distillery. Black found that he could not handle

(Deposition of Julius Friedland.)

such an amount of one brand so he turned the certificate over to us and we gave him credit.

Cross-interrogatories.

Q. State whether all of said liquor in barrel does or does not improve in quality and value when aged in wood. A. Yes.

Q. If your answer is that it so improves, state what the yearly increase of value is. State in full.

A. That is a very hard question to answer as it would, to a great extent depend upon the brand, age and also the number of barrels of such brand and age that were in the market.

(Signed) JULIUS FRIEDLAND."

Mr. COLE.—We object to all of that testimony unless it is shown that he had these goods on hand at the time of the fire.

The COURT.—Objection overruled. Gentlemen of the jury, you will understand that one part of the case goes in at one time. This evidence you will disregard, unless you find there were goods of this character in the place at the time of the fire, by other evidence, as this witness is testifying from a distance. If the plaintiff did not have such goods in his place when the fire occurred, he would not be entitled to recover.

Mr. LANGHORNE.—I will now offer in evidence the deposition of Joseph Greenbaum.

The COURT.—Taken under the same stipulation?

Mr. LANGHORNE.—Yes, all of these depositions were taken under [88] practically the same form of stipulation, I believe.

Mr. COLE.—The objection as to the form is waived, but they may be objected to as immaterial.

The COURT.—Proceed.

[**Deposition of Joseph Greenbaum.]**

Mr. LANGHORNE.—(Reading:)

“Q. State your name and residence.

A. Joseph Greenbaum and my residence all my life has been Louisville, Ky.

Q. State what, if any, position you occupy with the firm of Greenbaum Bros. of Louisville, Ky.

A. I am creditman of Greenbaum Bros. and a member of the firm; have acted continuously in said position for the last fifteen years.

Q. State whether or not the firm of Greenbaum Bros. ever sold and delivered to Mr. William Black, of Long Beach, Washington, any liquors or other goods. If so, state the amount thereof, date and price received therefor.

A. They did sell him whiskey on these different occasions which are as follows: July 22, 1911, \$234.79; July 19, 1911, \$53.75; April 2, 1912, \$169.45. These are all the sales shown by our ledger and hence *this all* we sold him.

Q. Produce, attach to your deposition and mark Exhibit ‘A’ for identification, statement or invoices of all goods ever sold by the firm of Greenbaum Bros. to William Black, of Long Beach, Washington.

A. I herein attach the (3) three invoices of sales made said Wm. Black of Long Beach, Washington,

(Deposition of Joseph Greenbaum.)

referred to by me in my former answer, and for identification mark them Exhibits 'A,' 'B' and 'C.'

Q. State whether or not the sale price of such goods included the freight thereon to Long Beach, Washington.

A. These sales prices as shown in the invoices filed in my former answer included the freight, but we only prepaid [89] freight on (1) one shipment, namely July 22, 1911, which he afterwards paid us. All goods were sold F. O. B. Louisville, Ky.

Q. State by whom the freight on any goods shipped by Greenbaum Bros. to William Black was paid.

A. As I stated in my former answers, William Black paid the freight on shipments of July 19, 1911, and April 2, 1912, and Greenbaum Bros. paid the freight on the shipment of July 22, 1911.

(Signed) JOSEPH GREENBAUM."

We offer in evidence the deposition of William P. Penick, under stipulation.

The COURT.—Read it.

[**Deposition of William P. Penick.]**

Mr. LANGHORNE.—(Reading:)

"Q. State your name and residence.

A. My name is William P. Penick and I reside in Anchorage, Kentucky.

Q. State what, if any, position you occupy with the firm of Brown-Foreman Company.

A. I am treasurer of the company and have continuously held said position since January, 1902.

(Deposition of William P. Penick.)

Q. State whether or not the firm of Brown-Foreman Company ever sold and delivered to William Black, of Long Beach, Washington, any liquors or other goods. If so, state what liquors were sold, the date thereof, and the price received therefor.

A. They did sell him whiskey and various liquors on five different occasions and the amounts and dates of sales are as follows: March 7, 1910, \$146.05; May 17, 1910, \$178.45; July 30, 1910, \$51.00; September 13, 1910, \$87.38; January 25, 1911, \$162.43; and these are the only whiskies we sold him.

Q. State whether or not the firm of Brown-Foreman Company ever sold and delivered to William Black of Long Beach, Washington, one barrel of Fox Mountain whiskey. If so, state the price received therefor and [90] the date when said sale was made.

A. I produce and attach hereto as Exhibits 'A,' 'B,' 'C,' 'D' and 'E' for identification the five invoices covering sales, itemized, including prices and dates of sales as set forth in my answer to question No. 3.

Q. State whether or not the price for the liquors heretofore mentioned included the freight thereon to Long Beach, Washington.

A. No. These goods were sold F. O. B. San Francisco, California, and shipped from San Francisco, Cal. The freight was prepaid on the shipments of March 7, 1910, and May 17, 1910, only, and amount of prepaid freight was included in the charges as shown by Exhibits 'A' and 'B.'

(Deposition of William P. Penick.)

Q. State who paid the freight on any goods shipped by Brown-Foreman Company to William Black.

A. We paid the freight on shipments of March 7, 1910, and May 17, 1910, as I explained in my preceding answer; the other three shipments were forwarded freight charges collect.

Q. Produce, attach to your deposition and mark Exhibit 'A' for identification, statement or invoices of all goods sold by the firm of Brown-Foreman Company to William Black, of Long Beach, Washington.

(Signed) WM. P. PENICK."

I will now offer the deposition of William E. Hull, taken under stipulation.

The COURT.—You may read it.

[**Deposition of William E. Hull.]**

Mr. LANGHORNE.—(Reading:)

"Q. State your name and residence.

A. William E. Hull.

Q. State what, if any, position you occupy with the firm of Clark Bros. Distilling Compay of Peoria, Ill.

A. General Manager of Clark Bros. & Company.

Q. State whether or not the firm of Clark Bros. Distilling Company ever sold and delivered to [91] William Black, of Long Beach, Washington, two barrels of Clark Bros. Whiskey. If so, state the date when said sale was made and the price paid therefor.

A. Clark Bros. & Company never sold directly to William Black, Long Beach, Washington, two bar-

(Deposition of William E. Hull.)

rels of whiskey. It may be that whiskey manufactured at our distillery was sold to him through some jobber in the west.

Q. State whether or not the firm of Clark Bros. Distilling Company ever sold and delivered to William Black of Long Beach, Washington, any other liquors.

A. We never have sold William Black any other liquors directly.

Q. State whether or not the freight on said goods was paid by the buyer or the seller.

A. We could not state whether the freight was paid by any dealer selling them or not.

Q. State whether or not the price at which said goods were sold included the freight.

A. We cannot answer this question because we have no record of any of our goods being sold to the said William Black.

Q. Produce and attach to your deposition and mark the same Exhibit 'A' for identification, statement or duplicate invoices of all goods sold by the firm of Clark Bros. Distilling Company to William Black.

A. We cannot produce Exhibit 'A' because we have never sold directly to the said William Black.

Cross-interrogatories.

Q. State whether said whiskey improved in quality and value by being aged in barrels.

A. Our whiskey when manufactured sells at a given price and improves at the rate of about ten cents per year per gallon in quality; in other words,

(Deposition of William E. Hull.)

a three-year old whiskey is worth to the jobber about thirty cents a gallon more than its original selling price.

Q. State [92] what the increase would be and what the value of said liquor is now, aged as aforesaid.

A. Answered in the above answer as nearly as possible.

(Signed) WM. E. HULL."

I now offer in evidence the deposition of John Ecklund, taken under stipulation.

The COURT.—Read it.

[**Deposition of John Ecklund.]**

Mr. LANGHORNE.—(Reading:)

"Q. State your name and residence.

A. John Ecklund, Portland, Oregon.

Q. State whether or not you ever sold and delivered to William Black, of Long Beach, Washington, any goods. If you have, state the amount and the kind of goods sold, and the date and price received therefor.

A. Yes; three cases of Pebbleford Whiskey, August, 11, 1911; \$37.50.

Q. Produce, attach to your deposition and mark Exhibit 'A' for identification, statement or duplicate invoice of all goods sold and delivered by you to William Black.

A. Statement hereto attached, marked Exhibit 'A.'

(Signed) JOHN ECKLUND."

I will now offer in evidence the original policy of insurance. It is admitted in the answer.

Mr. COLE.—I do not think we have any objections.

The COURT.—It may be admitted.

Whereupon said policy was admitted in evidence and marked Plaintiff's Exhibit 1 of this date. [93]

[**Testimony of Henry Kayler, for Plaintiff.**]

HENRY KAYLER, a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. LANGHORNE.)

Q. State your name to the jury.

A. Henry Kayler.

Q. Where do you live? A. Long Beach.

Q. How long have you lived there, Mr. Kayler?

A. Since 1907.

Q. How old a man are you? A. Sixty.

Q. State whether or not you were agent for the Central National Fire Insurance Company of Chicago, Illinois, at Long Beach in Pacific County, Washington, during the month of June, last year.

A. I was.

Q. Are you the agent that wrote the insurance policy—(interrupted).

A. I did.

Q. (Continuing.) I hand you Plaintiff's Exhibit for identification Number 1. Is that the policy?

A. Yes, that is it.

Q. Do you remember of a fire occurring in Long

(Testimony of Henry Kayler.)

Beach, Washington, on the night or morning of June 27th, 1912?

A. Yes, sir, on June 27th.

Q. Was the property covered by this policy of insurance destroyed by fire to your knowledge?

A. It was.

Q. State whether or not you gave the company any notice of [94] that fire.

A. I telegraphed the next morning, as soon as I got up the next morning, and they notified me—(interrupted).

Q. What did you do?

A. I telegraphed to Davenport Dooley & Company, Portland, Oregon, and to the New Hampshire Insurance Company.

Q. Who is Davenport, Dooley & Company?

A. The agents of the company.

Q. General agents? A. Yes, sir.

Q. Where at? A. Portland, Oregon.

Q. Is that the telegram (handing witness paper)?

A. Yes, sir.

Mr. LANGHORNE.—I will offer that in evidence as Plaintiff's Exhibit Number 2.

No objections.

The COURT.—It may be admitted.

Whereupon said telegram was admitted in evidence and marked Plaintiff's Exhibit 2 of this date.

Q. Did you afterwards make out a proof of loss for Mr. Black? A. Yes, sir.

Q. Look at that and state whether or not that is the original (indicating)?

(Testimony of Henry Kayler.)

A. That is one of the copies I made, yes, sir.

Q. To whom was that sent?

A. It was sent to the adjuster.

Q. The adjuster of whom? [95]

A. Davenport, Dooley & Company.

Mr. COLE.—I would like to have the telegram read.

Mr. LANGHORNE.—(Reading:) "Long Beach, Washington, June 27, 1912. Davenport, Dooley & Company, Portland, Oregon. Risk covered by policy, 590,757 burned this morning. Prosecuting attorney on spot investigating. Total loss." Signed by "P. Kayler, Agent."

Q. That is Mr. Black's signature, is it?

A. Yes, sir.

Mr. LANGHORNE.—We will offer in evidence proof of loss.

Mr. COLE.—That is objected to on the ground that it contains property not covered by the policy and on the further ground that it contains a gross and exaggerated value of the property mentioned, and not such proof of loss as is required by the terms of the policy. The policy provides for the insurance of his stock of goods, consisting principally of wines, liquors, cigars, beer, sodas and mineral water and all other goods, wares and merchandise not more hazardous kept for sale by the assured, and he has included in this proof of loss glasses, fixtures and vessels of various kinds, a long list of them, among which are four dozen one gallon demijohns, five dozen one-half gallon, two dozen champagne glasses,

(Testimony of Henry Kayler.)

and so on, twenty-five gross of corks, eight dozen bar and glass towels, and so on, all property that is not for sale by the insured.

The COURT.—The objection will be overruled so far as the gross exaggerations are concerned, the language of the policy is that false and fraudulent reports of loss would invalidate the proof in that regard and the [96] inclusion of these matters that were not covered by the policy, that would be a question of law to be determined by the Court, and the Court is not going to rule that they were not covered by the policy, but, at the same time, it would not invalidate the proof of loss because they were included in there under some mistake.

Exception allowed.

Whereupon said paper was admitted in evidence and marked Plaintiff's Exhibit 3.

Mr. LANGHORNE.—May I interrupt to say it was never intended by the plaintiff that these items were recoverable under this policy? The plaintiff will explain the condition under which the proof of loss was made out and we do not expect to recover for anything that was not covered by the terms of the policy, won't insist upon it.

Cross-examination.

(By Mr. COLE.)

Q. This proof of loss was rejected?

Mr. LANGHORNE.—We object to that upon the ground that it is not proper cross-examination.

Objection overruled. Exception allowed.

A. I believe they did write a letter saying that it

(Testimony of Henry Kayler.)

was not a proof of loss but all other companies, when they had a loss, the adjuster came down himself.

Q. All of your dealings were done by correspondence?

A. This was all done by correspondence; yes, sir.

Q. How long have you lived in Long Beach?

A. Since 1907.

Q. You are a good friend of Mr. Black's, are you not?

A. Sometimes; sometimes I am not.

Q. You have occasional quarrels with him, do you?

A. Sure. [97]

Q. He has thrown you out of the saloon several times when you did not have money to buy a drink?

A. No, sir, never did.

Q. Are you sure about that?

A. Yes, sir.

Q. You and Mr. Black took a trip to San Francisco in connection with some insurance matters?

A. No, sir.

Q. You did not go to San Francisco?

A. I did not go to San Francisco.

Q. Did you meet him in San Francisco?

A. I have never been in San Francisco.

Q. How did you happen to write this policy?

A. Because—(interrupted).

Mr. LANGHORNE.—I object to that as immaterial. The company is bound by it, he is the agent.

The COURT.—Objection overruled. You will understand, gentlemen of the jury, that when a policy is written, which is a contract—the company

(Testimony of Henry Kayler.)

charges a fraud here on the part of the plaintiff; it claims in effect that this property was not worth as much as he reputed it to be, and where fraud is charged, there is a wider latitude given the evidence allowed than in ordinary cases, because we have got to depend whether a man's intentions were honest or not, by all of the circumstances of the case, and the range of the testimony is liable to be very wide in such a case.

Q. Did Mr. Black ask you to write this policy?

A. Yes—well, I had been soliciting him for some time, and he finally agreed to give it to me. [98]

Q. How long before the policy was written had he asked you about it?

A. Why, I had been after him for several months before that.

Q. To get some insurance? A. Yes, sir.

Q. Mr. Black was not in town at the time this policy was written, was he?

A. No, sir, I do not think he was. He was not home. He was in town when he told me to write it, but he was not at home when I delivered it.

Q. About when was that?

A. Three or four days before I delivered it.

Q. Was it delivered the same day as bears date here, on the 18th day of June?

A. No, sir, two days afterwards, because I was waiting for him to come home.

Q. You delivered it on the 20th?

A. Yes, sir.

Q. You wrote it up on the 18th and kept it until

(Testimony of Henry Kayler.)

he came to Long Beach, and delivered it to him?

A. No, sir, he was not there then. I left it at the house.

Q. How long before the 18th day of June did he request this policy? A. In May.

Q. About what time in May?

Q. Well, sometime about the 18th or 20th.

Q. Did he tell you that he wanted a policy on his stock? A. Yes, sir.

Q. Did he tell you how much he wanted?

A. Yes, sir. [99]

Q. Did he tell you he wanted \$5,000.00?

A. Yes, sir.

Q. Did he tell you he wanted some on the saloon building? A. Yes, sir.

Q. On his fixtures? A. Yes, sir.

Q. How much on the saloon and fixtures?

A. \$3,000.00.

Q. And \$5,000.00 on the stock of goods?

A. Yes, sir.

Q. He was in Long Beach at the time that he told you to go ahead? A. Sure.

Q. About when was that?

A. That was about the 20th.

Q. About the 20th of May? A. Yes, sir.

Q. You did not write it out until about the 18th of June?

A. No, sir, because he had not finished taking stock yet. He was taking an inventory of what he did have and I helped him.

Q. Did you take an inventory of these goods?

(Testimony of Henry Kayler.)

A. I helped to take it.

Q. Where is the inventory now?

A. I think it is in those papers there (indicating).

Mr. COLE.—Mr. Langhorne, will you produce it?

Mr. Langhorne hands paper to counsel.

Q. Is that your handwriting (indicating)?

A. Yes, sir.

Q. You wrote this inventory yourself? [100]

A. Let me see it (examining); yes, that is my writing.

Q. Now, did you use this inventory in making up the proof of loss? A. Yes, sir.

Q. Did you go over the articles one by one?

A. I wrote the articles as he counted them.

Q. How did you happen not to make it bigger?

A. That is all that he wanted to pay for it.

Q. He did not want but \$5,000.00?

A. He had not been carrying that before. He only carried \$2,000.00 before.

Q. And you knew that the stock of goods was \$7,000.00 before you wrote out the policy?

A. Yes, sir.

Q. Did you count up these barrels yourself?

A. Yes, sir.

Q. You saw each one of them? A. Yes, sir.

Q. You saw the four barrels of Old Crow?

A. Well, I know there was—yes, there was four barrels of Old Crow.

Q. They were all tapped? A. No, sir.

A. None of them tapped?

A. There were four barrels altogether that were not tapped.

(Testimony of Henry Kayler.)

Q. How many barrels of Old Crow were tapped?

A. I think there was only one.

Q. How much drawn out?

A. I do not remember now.

Q. Was there any drawn out? [101]

A. Sure. I drank some of it myself.

Q. The other four were never tapped?

A. No, sir.

Q. Had never been tapped? A. No, sir.

Q. How many barrels of Green River was there?

A. I think there were three.

Q. Now, just a minute. While we are on this Old Crow. You bought a good deal of Old Crow whiskey yourself, didn't you?

A. I bought a good deal of it.

Q. And Mr. Bloomfield bought a good deal?

A. No, he bought Green River.

Q. And this whiskey you bought out of a barrel that was tapped or was it out of one that was opened up? A. It was out of one that was tapped.

Q. He paid for five barrels,—he had five altogether?

A. I do not know how many he bought. I know what was there.

Q. You bought this out of that that was tapped?

A. I have drank some of that liquor, but it was mostly too rich for my blood.

Q. You bought liquor off and on for several years?

A. Sometimes, not very often.

Q. You bought out of this same barrel all of the time? A. Well, I could not tell you.

(Testimony of Henry Kayler.)

Q. You saw this Old Crow yourself, did you, these four barrels? A. Sure.

Q. Do you know how much was drawn out of the barrel tapped? A. No, sir. [102]

Q. Did you tap on it? A. No, sir.

Q. Did you top on the other barrels?

A. No, sir.

Q. Did you tap on any of them? A. No, sir.

Q. You do not know whether there was any whiskey in them or not?

A. I know they were very heavy.

Q. You do not know whether it was whiskey or water, do you?

A. No, sir, I could not tell you that, only by the stamps on them.

Q. Where were those case goods stored?

A. Along—(interrupted).

Q. In the back room?

A. In the back room, and some of them in the glass cases.

Q. There were glass cases in the front room?

A. Yes—(interrupted).

Q. Where the bar is? A. In glass cases.

Q. There were none of the case goods in the bar-room, were there?

A. There might have been a few cases there.

Q. Where were those case goods stored?

A. Around in the back room, along by the chimney, several feet high, by the ceiling.

Q. On the north side? A. Yes, sir.

Q. That room opens up into the bar room?

(Testimony of Henry Kayler.)

A. Yes, sir. [103]

Q. There is a stove and tables and chairs in there?

A. No, not in the summer-time.

Q. Where were they?

A. The stove was moved out doors.

Q. This fire occurred on the 27th of June. Do you mean to swear there was no stove in there then?

A. Yes, sir.

Q. Any table in there?

A. Tables there, yes, sir.

Q. You are positive of that? A. Yes, sir.

Q. No chairs in there?

A. Yes, there were chairs.

Q. How many chairs? A. Three or four.

Q. You were in there the night of the fire?

A. Yes, sir.

Q. What time did you go in there?

A. About nine o'clock.

Q. You stayed there until half-past eleven?

A. About that, yes, sir.

Q. You were there when the bartender left?

A. Yes, sir.

Q. And you walked home with him?

A. About two blocks.

Q. You left him then?

A. I went off towards my home and he went off towards his.

Q. He took the money over to Mrs. Black?

A. He did that every night, took the money and keys over.

Q. Is that where you left him? [104]

(Testimony of Henry Kayler.)

A. No, sir.

Q. Where did you leave him?

A. Two blocks below, after he had given the keys to Mrs. Black.

Q. You join him again after he gave the keys to Mrs. Black?

A. No, sir, I waited for him until he came out.

Q. Anybody else with you? A. Yes, sir.

Q. Who? A. A man by the name of Phoenix.

Q. Is that Fred?

A. I do not know what his first name is.

Q. You and Mr. Dickinson and Phoenix were the three in there the night of the fire before it was closed? A. Yes, sir.

Q. In there every night?

A. Very nearly every night.

Q. Spent all of your time in there? A. No, sir.

Q. Most of it? A. No, sir.

Q. The majority of it? A. No, sir.

Q. You spent the daytime there? A. No, sir.

Q. Didn't you spend part of the day there?

A. Sometimes, yes, sir.

Q. Where those case goods piled up in the back room? A. Yes, one on top of the other.

Q. As I understand it, these goods in the room were not [105] in the room where the bar was, where the barrel goods were, but the case goods were in the other room joining this? A. Yes, sir.

Q. A door between them? A. No door.

Q. How did you go in there?

A. Just naturally.

(Testimony of Henry Kayler.)

Q. There was an open space where you could walk from the bar room into the back room where the case goods were kept? A. Yes, sir.

Q. No other case goods were kept in any other rooms except these two?

A. He had another room out on the other side where he had some in, and then he had some upstairs.

Q. What did he have off to the side?

A. Some case goods.

Q. How many?

A. I do not know—maybe fifteen cases.

Q. Off to the side? A. Yes, sir.

Q. How many did he have upstairs?

A. I do not know whether he had any of the case goods.

Q. He had some of the upstairs rented for a pool-room? A. Not at that time.

Q. Prior to that time?

A. It had not been for three years.

Q. You took this invoice yourself as I understood you to testify before? [106] A. Yes, sir.

Q. There was no case goods upstairs?

A. Yes, there was, but I did not take an invoice of them.

Q. He did not put those in? A. No, sir.

Q. How many barrels was there in the front room?

A. There were twenty-three or twenty-five, I am not sure which.

Q. Did you take this home (indicating) before you wrote the policy?

A. Had it in my office when I wrote the policy.

(Testimony of Henry Kayler.)

Q. You have had it ever since?

A. I had it until a short time ago, yes, sir.

Q. And you counted each one of these cases, did you? A. Yes, sir.

Q. It says here, "twenty-two cases of Roxbury Rye"; did you count those?

A. Yes, we had quite a tussle with them, because they were sent to Seattle instead of Portland and they had a disagreement on the freight on them.

Q. It came from—(interrupted).

A. From Baltimore.

Q. Were you there when it came?

A. I wrote the letter back to the company for him saying he would not accept it at Seattle, and that they would have to pay the freight from Seattle to Portland.

Q. How long was that before the fire?

A. Three or four months, along in the winter some time. I do not just exactly know the date.

Q. When did the Green River come? [107]

A. A long time,—he built up his reputation on Green River.

Q. Was there any goods destroyed in the fire that were not included in this inventory?

A. I think there is. I do not think that he got in what was upstairs.

Q. You do not think he got in what was upstairs?

A. No, sir.

Q. You counted five cases of Joe Gideon Whiskey?

A. Yes, I know when he got that.

Q. Where did he get those?

(Testimony of Henry Kayler.)

A. From Kelly, Portland.

Q. Fifteen cases of Frazier Whiskey. They were there, were they?

A. I cannot say just now, how many cases there were, but I know that he got it from an agent of Bonney Brothers. He had a cottage down there, a man by the name of Fiester.

Q. Four cases of Guggenheim. Where did he get those?

A. I do not know. I know that he had it there.

Q. What day did you take this inventory?

A. The 18th of May. I know that, because I made an appointment for the 15th and he had not got through moving his stuff in from the back warehouse—he had to move his stuff from the back warehouse into this room.

Q. What time did you start in?

A. About ten o'clock, in the evening.

Q. What time did you get through?

A. We did not work steady. We put in two or three days or a couple of days.

Q. You finished it up about the 20th then?

A. Somewhere about the 20th. I believe it was the 20th, [108] yes, sir.

Q. How about these four cases of Gibson Rye,—did you count those?

A. Whatever is down there is right; I know that.

Q. Isn't it a fact that you made up this list of goods out of your own memory, from—(interrupted).

A. No, sir, this was done by actually counting—he counted them—(interrupted).

(Testimony of Henry Kayler.)

Q. Where were those cases located, what part of the building?

A. As I told you, in the back room, back part of the saloon.

Q. In that back room? A. Yes, sir.

Q. Where were those two barrels of Clark Brothers?

A. Some of it was unpacked and in the show case in the front bar.

Q. Is this proof of loss identical with this inventory here?

A. I do not know whether—I think it is pretty nearly.

Q. Did you copy it off? A. Yes, I think so.

Q. You copied the proof of loss from this, did you, exactly?

A. Well, there were some other things we put in, we had forgotten in the other.

Q. Is there anything in the proof of loss that is not in there? A. I think there is.

Q. What is it?

Q. I know there was some things I had forgotten to put in, that was on the other policy, that was brass work on the front bar and there were several things I had forgotten, the pumps and the pumping system.

[109]

Q. What else?

A. I do not know whether those two last barrels that he got were in there or not.

Q. Everything that is on this inventory is on this proof of loss (indicating)? A. I think so.

(Testimony of Henry Kayler.)

Q. Anything more?

A. There might have been a few things that I have forgotten.

Q. Did he say anything to you when he wanted this policy that he was going to fix the insurance company?

A. No, sir; I am not in that kind of business.

Q. He did not say anything to you about that?

A. No, sir. There was a man that wanted to buy him out, and that is the reason that we took the inventory.

Q. You did not take it for the purpose of making the policy?

A. No, sir. I wrote him up on the strength of that, though.

Q. Who was the man who wanted to buy him out?

A. A man by the name of Mack.

Q. He lives in Portland? A. Yes, sir.

Q. Do you know Mr. Mack very well?

A. Not at all, only by correspondence.

Q. Ever see him? A. No, sir.

Q. Have you got those letters that he wrote you?

A. No, sir, I have not.

Q. Did you ever see his letters?

A. I did, and I wrote answers to them.

Q. Where are they now? [110]

A. I do not know. I suppose he (indicating Mr. Langhorne) has got them.

Q. Did Mr. Mack come down there?

A. Mack had been down there.

Q. What time did he come down there?

(Testimony of Henry Kayler.)

A. I do not know. Mr. Black can tell you that. I did not know anything about that until I read the letter that he showed me and had me write the answer.

Q. About what date was that?

A. That was along in the fore part of May, some time.

Q. This inventory was shown to Mr. Mack?

A. Certainly.

Q. You do not know what business Mr. Mack is in?

A. I suppose the saloon business. He wanted to go into it.

Q. Isn't it a fact that he is a teamster?

A. I do not know what he is.

Q. Did you write that answer after this was written up or before? A. Before.

Q. Mr. Black showed you the letter that he got from Mr. Mack? A. Yes, sir.

Q. And you wrote the answer?

A. And I wrote the answer that we would take an inventory and let him know what he would take.

Q. What is the reason the deal did not go through?

A. I do not know that.

Q. Mr. Black has never told you about that?

A. I suppose it would have gone through if it had not burned up.

Q. Mr. Black had not said anything to you about insurance at [111] the time that he was talking about selling to Mr. Mack?

A. I had been talking about insurance for a long time before that, that he had agreed to give to an-

(Testimony of Henry Kayler.)

other man, and he told me that the next time he would give it to me.

Q. This sale was all off before he told you to go ahead and write the policy?

A. I do not know whether it was.

Q. When was this sale to Mack called off?

A. I do not know as it was ever called off.

Q. What was this letter you wrote?

A. Well, I wrote a letter that he would take an inventory and let him know later how much he did have.

Q. How long after this letter that you wrote was it before you wrote the insurance policy?

A. Why, I wrote that up—maybe two or three weeks before I wrote the insurance policy.

Q. Mr. Black had not given you any order at that time for insurance, at the time you wrote the letter?

A. No, sir, but he had agreed to—he said if he took a policy he would make the other man pay the premium, and if he did not pay all cash, he wanted to be secure.

Q. Did he pay you anything for getting up this inventory for him? A. Yes, sir.

Q. How much did he pay you? A. Four dollars.

Q. And you were going to help him get up the inventory for the purpose of making this sale?

A. Sure.

Q. Mr. Black never told you whether the deal was called off [112] or not? A. No, sir.

Q. You do not know to this day whether it was called off?

(Testimony of Henry Kayler.)

A. I do not know whether it was called off or not. I know that he was up in Portland on that business and had an operation performed just before the fire.

Q. What time did Mr. Black leave Long Beach for Portland?

A. Why, he was up there, it must have been pretty nearly two weeks, I guess, at the time that he had his nose operated on.

Q. Did he leave Long Beach about the last of May?

A. Yes, somewhere along there.

Q. What part of May was it?

A. Some time about the last of May.

Q. About the 25th?

A. I do not remember the date that he left. I know that he was down there a couple of weeks.

Q. How long did he stay in Portland?

A. I suppose he was in Portland all that time, that he was away.

Q. When did you see him again?

A. I seen him on a Sunday—I guess it was Friday—no, Saturday, the 21st or the 22d.

Q. The Saturday before the fire?

A. Yes, of June.

Q. Where did you see him? A. In his house.

Q. Didn't go to his saloon that day?

A. Yes, I went to his saloon that day, too.

Q. Did you see him at the saloon, too? [113]

A. No, sir.

Mr. LANGHORNE.—I do not want to be put in a position of objecting, but I want to object to this as immaterial and not proper cross-examination.

(Testimony of Henry Kayler.)

Mr. COLE.—We contend that Mr. Kayler has a great deal of knowledge about this matter—(interrupted).

The COURT.—Objection overruled.

Q. When did he leave Long Beach again?

A. He left on Monday morning next, it must have been the 24th, I guess.

Q. What time in the morning?

A. He left there on the six o'clock train.

Q. Where did he go? A. He went to Astoria.

Q. Are you sure about that?

A. I know that he went off on the train.

Q. Did he tell you that he was going to Astoria?

A. Yes, sir.

Q. When did you see him again?

A. I did not see him until after the fire.

Q. Don't you know there was a warrant out for him at that time for selling liquors to minors?

A. No, sir.

Mr. LANGHORNE.—I object to that.

The COURT.—Objection sustained.

Q. You saw him the next morning after the fire, did you?

A. I think it was the day after that, the day of the fire was the 27th. I think it was the 28th that I seen him.

Q. Was there any fire in the saloon in the stove at the time you left there on the night of the 26th?

[114]

A. I was not in the back part. As a matter of fact, I do not think there was any stove there.

(Testimony of Henry Kayler.)

Q. Any fire there during the day?

A. I was not there during the day.

Q. You did not go in there at all until evening?

A. I generally went in in the evening.

Q. Can you state how many cases of these case goods were in the room where the bar is?

A. No, sir; I cannot recollect now.

Q. Were there ten?

A. Yes, it would take a dozen to fill up his show cases.

Q. Was there any case goods in the room where the bar was that remained in the cases on the 26th, on the day of the fire?

A. I don't think there was. There were two barrels stood there right down by the front door. I remember that, because I sat on one talking with a fellow.

Q. You know there were a couple of barrels in the front room, do you? A. Yes, sir.

Q. And you do not know whether there were any cases in the front room or not?

A. I do not remember whether there was or not that night.

Q. Where were the beer barrels kept?

A. The beer barrels were kept in the cellar.

Q. They were all in the cellar? A. Yes, sir.

Q. Where was the soda water kept?

A. In the back room. He had a kind of a room for people to go in and drink there, he had the soda water in there. [115]

Q. Where were the empty bottles kept?

(Testimony of Henry Kayler.)

A. In the back room.

Q. In the room where the cases were?

A. The empty beer bottles were kept in the back room.

Q. That is the room where the case goods were?

A. Yes, sir.

Q. Who put down this valuation of this property here (indicating)? A. I did, I suppose.

Q. You put those valuations down?

A. Yes, sir.

Q. Did Mr. Black tell you those were the figures?

A. Yes, sir.

Q. Do you know what these goods cost, yourself?

A. I am not an expert.

Q. That is the valuation you were going to put on the property to Mr. Mack, was it? A. Yes, sir.

Q. What other whiskey was there in there besides Old Crow and Green River?

A. I think he had pretty nearly every brand on the market.

Q. He had a good deal of it? A. Yes, sir.

Q. The barrels were all empty? A. No, sir.

Q. I mean all tapped?

A. No, sir; they were not all tapped.

Q. Now, a great deal of this whiskey he brought over from Ilwaco, didn't he?

A. He brought over a carload and then there was a wagon [116] brought out six barrels.

Q. Those four barrels of Cedar Brook McBrayer he brought over from Ilwaco?

A. I do not know. I was not around there at the

(Testimony of Henry Kayler.)

time that he brought it over. I do not know whether he brought it over from Ilwaco or bought it at Long Beach.

Q. You were not there when he brought it from Ilwaco?

A. I seen the car there and the goods there. I was in and out, but I did not take any notice of it, whether it was McBrayer or Cedar Brook or what it was.

Q. Did you see any cigars around the place?

A. Yes, sir.

Q. How many did you see?

A. Piled up on the back bar, piled four or five high—boxes.

Q. Do you know how long he had those cigars?

A. No, sir; I could not tell you that. I know that he would buy from different people.

Q. Mr. Black called out these different articles and you wrote them down? A. Yes, sir.

Q. Did you sit down at the table to do it?

A. No, sir, stood up at the bar.

Q. He called them out to you? A. Yes, sir.

Q. You did not go around and tap on them yourself? A. No, sir.

Q. You do not know whether this is correct or not?

A. I cannot tell whether a barrel is tapped or not.

Q. You did not compare this with the goods, yourself?

A. No, sir; only as he would call it out; I helped count some [117] of the goods.

Q. When he called out so many cases of a particular brand, did you verify it before putting it down?

(Testimony of Henry Kayler.)

A. No, sir.

Q. Took his word for it? A. Yes, sir.

Q. Also in regard to the value. The particular thing that he did was to report the number of cases and the price?

A. Yes, it was right in sight; I could see pretty well.

Q. Ever work for him before?

A. Done lots of business for him before in different ways.

Q. Had he promised you this insurance at the time you took this inventory? A. Yes, sir.

Q. How long before that?

A. He had been promising it to me for several months.

Q. He had agreed you should write a policy?

A. Yes, sir.

Q. And he had agreed how much it would be?

A. No, he had not said a word about that.

Q. Was this man Mack to have everything in the saloon?

A. No, he wanted the barrel goods particularly.

Q. Did he want the fixtures?

A. He was going to rent the property; I suppose that he would rent the fixtures and all.

Q. Why did you take an inventory of the case goods?

A. I did not take an inventory—I took the whole business to know just what he had.

Q. It was all taken for Mack, for that deal?

(Testimony of Henry Kayler.)

A. Certainly, he was taking it, because he was expecting to [118] sell.

Q. Are you still the agent for this company?

A. No, sir.

Q. Did you ever turn that Black premium over to them? A. Yes, sir.

Q. When was it?

A. Well, just after the fire—(interrupted).

Mr. LANGHORNE.—I object to that as immaterial. If he is the agent of the company, we have nothing to do, nothing to say, whether he turned the premium over to them or not.

The COURT.—Objection sustained.

Mr. COLE.—I will change that.

Q. Isn't it a fact that you kept the premium until the spring of 1913 and then only turned it over when you were threatened?

A. No threatening about it—(interrupted).

Mr. LANGHORNE.—Just a minute. We object to that.

Mr. COLE.—I think it goes to show the credibility of the witness on cross-examination.

The COURT.—Objection overruled.

Exception allowed.

Q. Is not that a fact?

A. No, sir. Right after the fire, they ordered twelve policies cancelled, and I had to pay those people back their returned premiums, and I kept that money, because I did not know whether they were going to cancel the whole business or not.

(Testimony of Henry Kayler.)

Q. Isn't it a fact they told you to cancel the whole business? A. No, sir, they did not.

Q. You are sure about that? [119]

A. Yes, I have got a letter there that will show you the number of policies they ordered cancelled.

Q. Isn't it a fact you wrote back and told them they were all cancelled except as to Mr. Black?

A. No, sir.

Q. Never wrote any such letter? A. No, sir.

Q. Isn't it a fact you wrote a letter to them stating you would cancel all policies except Black's policy, and that that was a fire loss? A. No, sir.

Q. Now, isn't it a fact, that you testified for Mr. Black in the liquor cases when he was arrested for selling liquor to minors? A. I did.

Mr. LANGHORNE.—I object to that as immaterial and irrelevant.

The COURT.—The question is answered.

Q. And isn't it a fact that you signed Mrs. Horr's name to a deed down there—(interrupted).

Mr. LANGHORNE.—Just a minute. I object to trying all of the affairs of Pacific County.

Objection sustained.

Mr. COLE.—A matter of impeachment.

The COURT.—How?

Mr. COLE.—It goes to the character of the witness and shows credibility.

The COURT.—You can impeach a witness by his general reputation, but I am not aware that you can impeach a witness by specific occurrences.

Mr. COLE.—Not by other witness, you cannot, but

(Testimony of Henry Kayler.)
by general [120] reputation.

The COURT.—I do not think you can go into a witness' entire life, about all of the things he has done.

Objection sustained.

Q. When did you first hear of the fire, Mr. Kayler? A. The next morning.

Q. Didn't you go over to the fire that night?

A. No, sir. I did not know anything about it until the deputy and the prosecuting attorney came to my place and woke us up.

Q. Woke you up the next morning?

A. Yes, sir.

Q. What time? A. About five or six o'clock.

Q. Who was with him?

A. Mr. Wright, the Prosecuting Attorney, and Mr. Deputy.

Q. And you did not hear a thing of this fire until they came over?

A. That is all I knew about it.

Q. How far did you live from this saloon?

A. About a full five blocks, and the room where we sleep is on the other side of the house. We could not see it over there.

Q. You did not see or hear anything?

A. No, sir.

Q. Did you go to bed right off when you got home that night? A. Sure.

Q. What time did you get home?

A. About half-past eleven I think it was.

Q. It was about half-past eleven when you left

(Testimony of Henry Kayler.)
the saloon, [121] wasn't it?

A. Yes, about that.

Q. Did you ever buy or sell any liquors?

A. I have bought quite a lot.

Q. I mean at wholesale.

A. Yes, I have, once or twice.

Q. You are not familiar with the market value of it, are you? A. I am not.

Q. Did Mr. Black receive any goods during the month of May that you know of?

A. Well, I think he got those two barrels that were rolled into the door there. I think that came in May.

Q. How did you happen to keep this inventory if it was taken for the purpose of trade or making a sale? A. I made it out in triplicate.

Q. What did you do with the other one?

A. Mr. Black got one and sent one to Mr. Mack.

Q. You mailed it yourself?

A. No, sir, he mailed that himself.

Q. You did not mail it. You gave him one and kept one, did you? A. Yes, sir.

Redirect Examination.

(By Mr. LANGHORNE.)

Q. You said you wrote some letters for Mr. Black. Kindly tell the jury why you wrote some letters for Mr. Black.

A. Mr. Black, while he is a pretty good writer, is not a very good speller, and he asked me to write his letters for him once in a while.

Q. Now, Mr. Kayler, in making out this proof of

(Testimony of Henry Kayler.)

loss, there [122] is some items included that do not seem to be covered by the policy, such as bottles and towels and so on.

A. I supposed it was all a part of the stock when I put it down. I never made out any proof of loss. My business was to write it up, the adjuster did that work generally.

Q. You sent the proof of loss to the company or adjuster? A. Yes, sir.

Q. At the time you included those goods, did you believe that those articles I have called your attention to, that they were covered by the policy?

A. Sure.

Q. Did you or Mr. Black include them?

Mr. COLE.—We object to that. It is very plain they are not covered by the policy.

Mr. LANGHORNE.—I do not dispute that. I am not saying that they are covered by the policy.

Objection overruled. Exception allowed.

Q. When you included these articles, was there any intention on your part to defraud the company?

A. No, sir. I supposed everything inside of that saloon was covered.

Recross-examination.

(By Mr. COLE.)

Q. In your report to the company, you stated you believed this fire was of incendiary origin.

A. Well, it did not look good.

Q. And you were satisfied that somebody set it, were you? A. I am.

(Testimony of Henry Kayler.)

Q. Did you see Mr. Black Monday evening of the 24th? A. No, sir. [123]

Q. Did you see him Tuesday evening?

A. I did not see him until Sunday night. That was the last I seen of him.

Q. You did not see him Saturday?

A. Yes, and Sunday.

Q. You didn't see him Monday?

A. Monday morning he went off at eight o'clock.

Q. He left on the train? A. Yes, sir.

Q. Did you go up to his house? A. Yes, sir.

Q. What for?

A. I wanted to ask him some more questions and he was gone.

Q. You left the policy with his wife while he was gone, with Mr. Black's wife?

A. I did not know where the policy was then.

Q. Where did you leave it?

A. I did not have the policy then.

Q. On the 22d? A. No,—the 24th, you said.

Q. The policy was issued on the 24th?

A. No. The policy was issued on the 18th.

Q. Did you give it to Mrs. Black personally?

A. I did.

Q. She was at home? A. Yes, sir.

Q. You did not give it to anyone else in the house?

A. No, sir, I gave it to her in the house.

Q. Mr. Black at that time was in Portland, was he?

A. Yes,—I do not know whether he was in Portland or Astoria. [124]

(Testimony of Henry Kayler.)

Mr. COLE.—I would like to offer this notice of loss in evidence. Is this the notice of loss that you signed? I will offer it as an identification just now.

(Witness examines paper.)

A. Yes, that is the one.

Q. You sent that in to the company's agent in Portland about the time of the loss, about the date that it bears, June 27th, 1912?

A. I think so, or a day or two afterwards; I am not sure which.

(Witness excused.) [125]

Mr. LANGHORNE.—I will offer in evidence the deposition of Mr. Bickart, of the firm of Bluthenthal & Bickart.

The COURT.—Taken under stipulation?

Mr. LANGHORNE.—Yes, sir.

The COURT.—It may be admitted.

[**Deposition of Monroe L. Bickart.**]

Mr. LANGHORNE.—(Reading:)

“Q. State your name in full and residence.

A. My name is Monroe L. Bickart, and I reside in Baltimore City, Maryland.

Q. State whether or not you are a member of the firm of Blumenthal & Bickart, of Baltimore, Md.

A. I am a stockholder in Bluthenthal & Bickart, Inc., a Maryland Corporation, and I am Secretary-Treasurer of the corporation.

Q. State whether or not the firm of Bluthenthal & Bickart ever sold and delivered to William Black, of Long Beach, Washington, any liquors. If so, state the amount, date and price thereof.

(Deposition of Monroe L. Bickart.)

A. My company made a sale of liquors to William Black, Long Beach, Washington, shipment of which was made under date of August 30th, 1911, amounting to Two Hundred and Fifty Dollars (\$250.00), being twenty-five (25) cases of Roxbury Rye, quarts, at Ten Dollars (\$10.00) per case, with Five (5) cases Roxbury Rye quarts gratis.

Q. State whether or not said sale included twenty-two cases of Roxbury Rye Whiskey. If so, state the price paid for said whiskey and the date when said whiskey was sold.

A. There was only one sale, as described in answer three, which of course, included twenty-two cases of Roxbury Rye Whiskey.

Q. Produce and attach to your deposition and mark same Exhibit 'A' duplicate invoice or statement of all goods sold and delivered to William Black, by the firm of Bluthenthal & Bickart.

A. Attached [126] is itemized statement of the account, marked Exhibit 'A.'

Q. State whether the freight on said goods sold by the firm of Bluthenthal & Bickart to William Black was paid by the seller or purchaser.

A. The freight was prepaid by Bluthenthal & Bickart, Inc., amounting to Nineteen Dollars and Sixty-three cents (\$19.63), and charged to William Black, the terms of the transaction being that William Black was to stand the freight.

Q. State whether or not the price at which you sold said goods included the freight.

A. The price of Ten Dollars (\$10.00) per case did

(Deposition of Monroe L. Bickart.)

not include the freight. Therefore, the freight was charged as a separate item, as it was necessary to prepay the freight from this end.

(Signed) MONROE L. BICKART."

I will now offer in evidence the deposition of Don H. Dickinson, taken under stipulation.

The COURT.—It may be admitted.

[**Deposition of Don H. Dickinson.]**

Mr. LANGHORNE.—(Reading:)

"Q. State your name, age and residence.

A. My name is Don H. Dickinson; age, twenty-nine; I am on the corner of Regent and Clackamas Streets, Portland, Oregon.

Q. Where did you reside in 1912?

A. Long Beach, Washington.

Q. How long had you resided at Long Beach, Washington? A. Four years.

Q. When did you leave there for your present residence?

A. I don't remember the exact date, the last month, about the middle of last month.

Q. Did you know the plaintiff, William Black, at Long Beach, Washington? A. Yes, sir.

Q. And for about how long?

A. Knew him the whole time I was there.

Q. Were you in the employ of William Black at Long Beach, Washington, during 1912? [127]

A. Yes, sir.

Q. During what time were you in his employ?

A. I went to work for him about the 27th of May.

(Deposition of Don H. Dickinson.)

Q. Go on with your statement.

A. And was there to the 26th of June, the 26th of June is the last night I was in the place.

Q. Were you in charge of his saloon at the time it was destroyed by fire?

Mr. COLE.—I object to that question and ask that it be stricken out.

The COURT.—Overruled. It is preliminary.

Mr. COLE.—Before proceeding with this, this deposition was taken under stipulation or all interrogatories.

The COURT.—With the objections noted at the time?

Mr. COLE.—The stipulation was that the objections should be taken in Court as if the witness was present. It says, "May be introduced in evidence at any trial of the above-entitled action subject to the same objections that could be taken if said witness were present in Court and testifying."

The COURT.—Read the question.

Mr. LANGHORNE.—(Reading:) "Q. Were you in charge of his saloon at the time it was destroyed by fire?"

The COURT.—What is your point?

Mr. COLE.—It was taken under stipulation that the objections could be reserved and taken at the trial. It says, "Said deposition may be taken without any previous notice of the time and place of taking of said deposition, the notice as to the time and place of taking said deposition being hereby expressly waived; said deposition may be taken and

(Deposition of Don H. Dickinson.)

forwarded by said notary to the clerk of the United States District Court [128] at Tacoma, Washington, and may be introduced in evidence at any trial of the above-entitled action, subject to the same objections that could be taken if said witnesses were present in court and testifying.

The COURT.—Objection overruled. It seems to me that under that stipulation it would be fair to the party if the objections were made at the time and to be ruled on by the Court, then counsel might be willing to concede that his question was faulty and have an opportunity to correct the question if objection is made.

Mr. LANGHORNE.—(Reading:)

“A. Yes, sir.

Q. On or about the 27th day of June, 1912?

A. Yes, sir.

Q. Were you in the sole charge thereof?

A. Yes, sir.

Q. How long previous to the time the said property was destroyed were you in the sole charge thereof?

A. The day I went to work there I had the key turned over to me until the following morning of the fire.

Q. State the reasons, if you know, why Black employed you?

A. He had to come to Portland to have his nose operated on.

Q. What time was it that the said saloon and contents burned?

(Deposition of Don H. Dickinson.)

A. That I could not say, I didn't know a thing about it until about—

Q. I want the date of the fire.

A. It was the 27th of June.

Q. What year? A. 1912.

Q. At what hour, might just as well include that.

A. I didn't know a thing about it until they came and woke me up about a quarter to three, half-past two or a quarter to three.

Q. Go right on and say what time of day or night.

A. That was in the morning about half-past two or a quarter to three.

Q. How late were you in the saloon of the previous day?

A. I closed up the saloon, it was [129] about twenty-five minutes after eleven.

Q. Who was present with you at the time of the closing up?

A. There was Henry Kayler and Ed Phoenix.

Q. Was there at the time of the closing of the saloon at said time any fire in the building?

A. There was during the day, but there was no fire there after I came back from my supper, from my supper hour on.

Q. When did you first learn of the fire?

A. When they came and woke me up in the morning.

Q. Where did you reside at Long Beach during this time?

A. I was about six blocks away from the saloon.

(Deposition of Don H. Dickinson.)

Q. Do you know the cause of the fire?

A. No, sir.

Q. At the time of the fire was there the usual stock in said saloon building? A. Yes, sir.

Mr. COLE.—I think that would be a little bit leading.

Mr. BRUMBACH.—‘Was there the usual stock’; answer that yes or no, hardly leading.

Mr. COLE.—I object to that on the ground it is leading.”

The COURT.—Objection sustained.

Exception allowed.

Mr. LANGHORNE.—(Reading:)

“Q. Do you know the amount of stock that was in the building at the time?

A. I don’t know the exact amount of the case goods, but I know he had either 21 or 22 barrels, I forget just which, of liquor in the front part of the saloon. I know he had quite a number of case goods in the back.

Q. What kind of liquor do you refer to?

A. It was whiskey and wine in the front part. He had whiskey and wines in case goods in back.

Q. During the time that you were in sole charge as heretofore stated, was there any liquors shipped by you by orders of Mr. Black out of said saloon?

[130]

A. No, sir.

Q. Was there anything shipped out of that saloon during that time? A. Yes, sir.

Q. State what it was.

(Deposition of Don H. Dickinson.)

A. It was nine barrels of empty bottles.

Q. Empty bottles?

A. Shipped to the Astoria Bottling Company.

Q. Where was Mr. Black at the time of the fire?

A. I think he was here in Portland.

Q. Was he at or in the vicinity of Long Beach?

A. Not at the time of the fire, no, sir.

Q. When did he return after the fire?

A. The very next day.

Q. How long previous to the time of the fire did you see Mr. Black and where?

A. It was the Saturday night just before the fire, was the—I think it was on the 22d, and he left on Sunday morning. I guess that was Saturday.

Q. When did you say he left?

A. It was Sunday morning,

Q. What place do you refer to?

A. From Long Beach.

Q. Did you or did you not have anything to do with that fire? A. I did not.

Q. Do you know the amount and value of the liquors that Black had there?

A. No, sir, I don't know the exact amount, I know it is way up in the thousands.

Mr. COLE.—I move that that be stricken out. It is not shown that he is competent to testify, and for the reason it is not responsive to the question."

Mr. COLE.—He testified previously that he did not know anything about the amount or quantity of goods on hand.

(Deposition of Don H. Dickinson.)

The COURT.—Objection overruled.

Exception allowed.

(Recess.)

Mr. COLE.—(Reading cross-examination:)

“Q. Did you say you started in working for Mr. Black on the 27th of May, 1912, [131] Mr. Dickinson? A. Yes, sir.

Q. Where did you live prior to that time?

A. About six blocks away from the saloon.

Q. How long did you live in Long Beach?

A. Four years.

Q. Known Mr. Black all the time for the four years? A. Yes, sir.

Q. When did you leave Long Beach?

A. It was in the middle of last month here, some time, I don't remember the exact date.

Q. Middle of August this year? A. Yes, sir.

Q. And now living in Portland? A. Yes, sir.

Q. You are a married man, Mr. Dickinson?

A. Yes, sir.

Q. A wife and any children?

A. Wife and one child.

Q. And you lived in Long Beach from the time of the fire up until about the middle of August?

A. Yes, sir.

Q. What did you do after the fire?

A. After the fire I went and tended bar for James Hanneman.

Q. When did you start in working for him?

A. The latter part of July, I don't know the exact date. There was no excitement that day so I don't

(Deposition of Don H. Dickinson.)

remember the date.

Q. 1912? A. 1912.

Q. How long did you work for him?

A. Worked along until the last of December.

Q. December, 1912? A. Yes, sir.

Q. What have you been doing since that time, anything? A. I was down clearing land.

Q. When did you start in clearing land?

A. About the 10th of January, 1913.

Q. That is when you started in, was it, January, 1913? A. Yes, sir.

Q. How long have you worked at that?

A. Worked up until previous to the time I came to Portland.

Q. Have you ever been arrested, Mr. Dickinson?

A. Yes, sir.

Q. When was it, Mr. Dickinson?

A. It was the morning of the 27th of June, 1912, 27th of June.

Q. What was that for?

A. Well, I was accused of setting fire to the [132] saloon.

Q. Who did that, who arrested you?

A. Mr. Wright.

Q. Who is Mr. Wright?

A. He was prosecuting attorney then.

Q. He was prosecuting attorney for Pacific County? A. Pacific County, yes.

Q. Were you ever arrested before that?

A. No, sir.

(Deposition of Don H. Dickinson.)

Q. Now, what time did you generally leave the saloon at night?

A. Well, right there it wasn't during the busy season, I opened up between seven and half-past eight and closed up just according to how the custom was.

Q. Generally stayed there until about twelve and one?

A. I was only open one night until twelve o'clock, that was on Saturday night, I closed up shop at twelve.

Q. Saturday night you closed at twelve?

A. Yes, sir.

Q. Didn't ever stay open until one?

A. No, sir.

Q. What was your usual closing time during the week? A. All the way from half-past nine on.

Q. Varied the time? A. Yes, sir.

Q. All the way from half-past nine to half-past eleven? A. Half-past eleven.

Q. How large is this saloon building where the bar was located?

A. I don't know how large it was, about twenty-five feet frontage.

Q. About twenty-five feet by how much, how deep?

A. Sixty-five or seventy feet, eighty.

Q. About twenty-five by sixty-five or seventy?

A. Yes.

Q. Does that include the whole building?

A. That includes the saloon floor, the bar floor.

Q. How many rooms were there in this building?

(Deposition of Don H. Dickinson.)

A. How is that?

Q. How many rooms were there in this building?

A. It was just the two, no three, the front and two back rooms.

Q. How large are the back rooms?

A. One that was used for a storeroom and the other was kind of a little side entrance. [133]

Q. How large was the storeroom?

A. Oh, about twelve by fifteen.

Q. How high was it, would it be eight feet high?

A. It was more than eight feet, about ten feet.

Q. It was about twelve by ten? A. Yes.

Q. The other small room was too small to use for anything except as a side entrance?

A. You could keep things in there, it was a pretty good size.

Q. What was it used for, anything specially?

A. No, sir, it did have a side entrance, but he closed that up.

Q. Now, where were the barrel goods kept, in the front room? A. In the front room, yes, sir.

Q. And where were the empty barrels kept?

A. The empty barrels, I think Bill shipped all the empty barrels before I took charge.

Q. He shipped nine while you were there, didn't he, to Astoria, nine barrels of empty bottles?

A. Empty bottles, yes, sir, they were kept in the back.

Q. These barrels of whiskey were all kept in the front room, were they? A. Yes, sir.

Q. You didn't have any barrels in the front room

(Deposition of Don H. Dickinson.)
with whiskey in at all?

A. There were two—two or three, I forget just which it was now—in the back room.

Q. They had some whiskey in? A. Yes.

Q. How many that didn't have any were there in the back room?

A. There were no empty whiskey barrels in the back.

Q. And were these barrels in front kept in a rack, or shelf somewhere?

A. On racks and two on the floor.

Q. Did you draw any goods out of them?

A. The ones on the floor?

Q. Yes.

A. No, sir, the ones on the floor weren't tapped, the ones on the rack, there were some were tapped and some that weren't.

Q. You sold most of the goods over the bar, did you? A. Yes, sir.

Q. And sold some goods by [134] the gallon, did you, to people around there? A. Yes, sir.

Q. And about how much were your daily receipts while you were there?

A. About eight or nine dollars.

Q. You didn't take in very much money?

A. No.

Q. Business was rather poor. Would they average any more than that while you were there?

A. Yes, Saturday nights when they gave dances I made pretty good.

Q. About how much would you take in then?

(Deposition of Don H. Dickinson.)

A. All the way from nineteen to twenty-five.

Q. How much money did you take in in the thirty days you were there?

A. I don't know just how much I did take in.

Q. Do you know about how much you would average? A. No.

Q. What time did you go down to the saloon in the morning?

A. All the way from half-past seven to half-past eight.

Q. And you stayed there until twelve o'clock?

A. I stayed there until twelve o'clock.

Q. And closed up to go to lunch?

A. And closed up to go to lunch.

Q. Come back about one?

A. About half-past twelve, somewhere along there, just according to the trade.

Q. Kept open until six? A. Yes, sir.

Q. And came back about seven? A. Yes.

Q. And kept open until about half-past nine to half-past eleven? A. Yes, sir.

Q. Did you have any help there? A. No.

Q. Was Mr. Black in Long Beach when he employed you? A. When he employed me?

Q. Yes. A. Yes, sir.

Q. When did he leave?

A. He left the following day I was employed.

Q. And he didn't show up in Long Beach again until after the fire?

A. He was there the Saturday night just before the fire, about the 22nd.

(Deposition of Don H. Dickinson.)

Q. What day did the fire happen?

A. It was the date of June 27th, 1912.

Q. I mean what day of the week, what day of the week did it [135] occur on?

A. Thursday or Friday.

Q. Thursday or Friday? A. Yes, sir.

Q. He was there on the preceding Saturday, the last day he was there? A. Yes, sir.

Q. How long did he stay?

A. He was there just over night, left on Sunday morning.

Q. Did he tell you where he was going?

A. He said he was going back to Portland.

Q. He said he was going back to Portland?

A. Yes.

Q. Did he tell you when he was going to return?

A. No, sir.

Q. Didn't tell you when he was going to return. Now, you didn't see him from the time, the day after he employed you until the Saturday preceding the fire? A. No, sir.

Q. And you turned the money over to his wife?

A. Yes, sir.

Q. How far did she live from the saloon?

A. Right across the street.

Q. Turned it over to her every night?

A. Yes, sir.

Q. Did she give you a receipt for it?

A. No, sir.

Q. She didn't give you any receipt?

A. No, sir.

(Deposition of Don H. Dickinson.)

Q. You turned the cash over to her?

A. Yes, sir.

Q. Did you keep a cash register? A. Yes, sir.

Q. Did that show the receipts, amount taken in?

A. Yes, sir.

Q. Did you save any record of the receipts from the cash register? A. I don't know.

Q. You didn't turn any over to Mrs. Black, did you? Did you turn any cash register receipts over to Mrs. Black? A. No, sir.

Q. Did you stop at Mrs. Black's house on the night of the fire when you went home?

A. Only went there and turned in the money and then went home.

Q. She was at home, was she? A. Yes, sir.

Q. And you went on home from there?

A. Yes, sir.

Q. What time did you get home?

A. It was about twelve o'clock at the time I got home.

Q. You received [136] a message that night that your wife was sick and for you to come home early, didn't you? A. That night?

Q. Yes, on the night of the fire. A. No, sir.

Q. Was she sick that night? A. No, sir.

Q. And you didn't tell anybody that, that your wife was sick and you had to go home early?

A. Oh, I used to go home just as early as I could because my wife wasn't feeling very well and I never would stay away any longer than I could help.

Q. Isn't it a fact you received a message that night

(Deposition of Don H. Dickinson.)

that your wife was sick, to come home as early as possible? A. No, sir.

Q. Didn't receive any such message?

A. No, sir.

Q. Was your wife up when you got home?

A. No, sir.

Q. She was in bed? A. Yes, sir.

Q. She was asleep? A. No, she was not asleep.

Q. She was awake when you got home, was she?

A. Yes.

Q. And you were both asleep when the officers came and knocked on your door? A. Yes, sir.

Q. That was about half-past two or a quarter to three?

A. About half-past two or a quarter to three.

Q. And you got up and came to the door at that time, did you? A. Yes, sir.

Q. And your wife was also asleep when they rapped on the door? A. Yes, sir.

Q. Which room were the empty cases piled up in, Mr. Dickinson? A. The empty cases?

Q. Yes, where were the empty cases piled?

A. The empty cases—I didn't see any empty cases. I used to burn up the empty cases just as fast as I would empty them.

Q. Used to burn them up in the stove?

A. Yes, sir.

Q. You didn't burn up any empty cases that were there when you came there, did you? A. No, sir.

Q. The ones you used you burned them up right along, did you? A. Yes, sir. [137]

(Deposition of Don H. Dickinson.)

Q. You are sure about that, you burned them all up, did you? A. Yes, sir.

Q. Did you have any wood there?

A. On the outside, in the back.

Q. You took a hammer and burned up the empty cases, did you?

A. Used to burn them up, used to use them for kindling wood to start the fires.

Q. How many case goods did you use while you were there?

A. I used about two cases there, but the show cases were filled when I took charge.

Q. You emptied the show cases and opened up about two more cases? A. Yes.

Q. And the goods that you sold by the gallon were drawn from the barrels, were they? A. Yes, sir.

Q. And did you sell—how many—did you sell any in larger quantities than gallons? A. No.

Q. Never sold any in larger quantities. Did you sell as much as five gallons to anybody?

A. No, sir.

Q. What was the most you ever sold?

A. One gallon.

Q. One gallon at a time? A. Yes.

Q. And did you turn over any goods to Mr. Hanne-man while you were there? A. No, sir.

Q. He didn't get any at all? A. No, sir.

Q. Now, did you ship the nine barrels of empty bottles to the Astoria Bottling Works yourself?

A. Yes, sir.

Q. Was Mr. Black there the day you shipped those?

(Deposition of Don H. Dickinson.)

A. No, sir.

Q. Where did you get the empty barrels, in the back room or front room? A. Back room.

Q. Now, the bottles were in the back room, too, were they not? A. Yes.

Q. Did you take those out of empty cases—out of the empty cases?

A. No, we get all our bottled beer by the barrel and then we empty the barrels and send them back.

Q. Send them back? A. Yes.

Q. Now, you used gasoline to light the building with, for the lights? A. Yes, sir. [138]

Q. Where was that kept?

A. Under the back stairs in the back part of the saloon.

Q. And you had some cigars in your stock, did you?

A. Yes, sir.

Q. And you sold a few cigars?

A. Very few cigars.

Q. Didn't sell many cigars? A. No, sir.

Q. About how many cigars would you sell a day?

A. I don't think I sold over half a box the whole month I was there.

Q. Sold about fifty then during that month you were there? A. Yes.

Q. Did you get any liquors while you were there, receive any? A. No.

Q. Receive any cigars? A. No, sir.

Q. You didn't buy anything at all?

A. I didn't buy a thing.

Q. You didn't have any authority, I suppose, to

(Deposition of Don H. Dickinson.)

buy any goods, did you? A. No, sir.

Q. Did you tell the officers what you thought was the cause of the fire?

A. I told them I didn't know.

Q. You say that Mr. Black was there the Saturday night preceding the fire? A. Yes, sir.

Q. When did he leave, Sunday?

A. Sunday morning.

Q. Was he in the saloon Saturday night?

A. Yes, sir, he came over there and showed me what barrels to tap.

Q. Showed you which ones to use from, did he?

A. Yes, sir.

Q. And how long did he stay there?

A. He wasn't in the saloon five minutes.

Q. He didn't sell any goods himself, did he?

A. No, sir.

Q. He left the next day and told you he was going to Portland—or was it the following Monday?

A. Yes, sir.

Q. Was it Sunday or Monday he left?

A. Sunday.

Q. About what time did he leave?

A. On that six-thirty train.

Q. Do you know where Ed Phoenix is?

A. He is here in Portland some place, I don't know just where; I can find out for you.

Q. Did you count the barrels in the front room, Mr. Dickinson? A. Yes, sir.

Q. You counted them, did you? [139]

A. Yes, sir.

(Deposition of Don H. Dickinson.)

Q. Why did you count them?

A. I had to work around them all the time; I could not help knowing how many were there.

Q. Isn't that more of an estimate than an actual count? A. Yes, sir.

Q. More of an estimate? A. Yes, sir.

Q. You estimated that there was about twenty or twenty-one, didn't you?

A. There was about twenty-one or twenty-two, I guess.

Q. You didn't count each one, did you?

A. No, I didn't get right down and count them.

Q. You just judged there was that many there, offhand? A. Yes.

Q. And there were no barrels in the back room with liquor in them at all, was there?

A. Either two or three at the back door.

Q. Had they been tapped? A. No, sir.

Q. They hadn't been tapped at all? A. No, sir.

Q. You are positive of that, are you?

A. Yes, sir.

Q. Did you tap on them to see if they had been tapped?

A. I moved them when I had to clean up in the back part of the saloon.

Q. You don't know what was in them, do you, except that they were full?

A. Marked whiskey, that is all I can say.

Q. You don't know whether they were full of water or whiskey, do you?

A. I could not swear to that.

(Deposition of Don H. Dickinson.)

Q. You didn't tap them yourself?

A. No, sir.

Q. Now, you say that the case goods in the back room were mostly full? A. Yes, sir.

Q. About how many cases was there, would there be a dozen?

A. Oh, gee, yes, there was at least fifty cases.

Q. At least fifty? A. Yes, sir.

Q. You didn't count them, though, did you?

A. No, sir.

Q. You would not swear there would be fifty, would you?

A. I would gamble there was fifty, or more.

Q. You would estimate at least fifty? A. Yes.

Q. And were [140] they all piled up in—

A. Yes, sir.

Q. All piled in one pile?

A. Straight, took the whole side of the building in the back room.

Q. Piled up along the side, were they?

A. Yes, sir.

Q. Which side of the building were they piled on?

A. On the north side.

Q. How many rows were there?

A. Just the one row.

Q. Piled up against the wall? A. Yes, sir.

Q. How high did they go up towards the ceiling?

Q. Go about ten feet?

Q. Were they piled up nearly to the ceiling?

A. A little over half way to the ceiling.

Q. And were they piled all along the wall?

(Deposition of Don H. Dickinson.)

A. Just on the one side.

Q. Did it cover the whole side?

A. All but the spaces where the windows were.

Q. Was there any place taken out for the barrels, were the barrels also piled on that side?

A. The barrels were at the back door, right under the back steps.

Q. You mean those two barrels? A. Yes.

Q. Which you mentioned a while ago?

A. Yes, sir.

Q. Now, what was in the rest of that part of that room, empty?

A. Nothing but the barrels of beer and empty bottles.

Q. Empty barrels? A. Empty bottles, yes, sir.

Q. Was there anything, any empty barrels in there, any more than the nine, or didn't you count them? A. Oh, there were some full barrels there.

Q. Full beer barrels?

A. That I hadn't opened up yet.

Q. And these empties?

A. These empties I refilled and shipped myself.

Q. And the rest of the room was vacant, was it?

A. Yes, sir.

Q. Nothing in the rest of the room?

A. There was a stove.

Q. That was in the back room, was it?

A. Yes, sir.

Q. Was there a stove in the front room, too?

A. No, sir.

(Deposition of Don H. Dickinson.)

Q. What else was in the [141] back room besides the stove?

A. Just the stove and two chairs and the goods.

Q. How was this front room heated where the bar was?

A. From the stove, there was a big door right there going from the bar room to the back.

Q. Connected, was it? A. Yes.

Q. Now, what else was there in the back room besides these beer barrels and the stove and chairs, was there tables? A. No, sir.

Q. No tables? A. No, sir.

Q. The tables were all in the front room, were they?

A. The tables were stored away in the little room we didn't use.

Q. What else was in the little room you didn't use?

A. Nothing outside of a ladder and a few chairs.

Q. Now, you just had the one stove in the building that heated up all the rooms, did you?

A. Yes, sir.

Q. That was a wood stove? A. Yes, sir.

Q. What time did the fire go out on the night preceding the fire? A. Half-past five.

Q. Was it cold that day? A. Yes, sir.

Q. Rather cold, was it? A. Yes, sir.

Q. And when you came back at night you didn't light the fire?

A. No, because I thought I would close up early again that night.

Q. That is the reason you didn't light the fire, you

(Deposition of Don H. Dickinson.)

thought you would not be up there but a few minutes? A. Yes, sir.

Q. And I suppose the reason you stayed there some people happened to come in?

A. There was a few drummers in there that night.

Q. What time did Mr. Kayler come in?

A. He came in there I should judge between eight and nine o'clock.

Q. He stayed there until— A. Closing up time.

Q. When did you see him last the night of the fire? A. The night of the fire?

Q. Yes.

A. About three [142] blocks from the place, he was on his way home.

Q. Did he live in the same direction you did?

A. Yes, sir.

Q. Went along with you?

A. Went along until he came to his street and then he went down his street to go home and Mr. Phoenix and I went on down home.

Q. You went on to your street, did you?

A. Yes, sir.

Q. Did they wait for you while you took the money in to Mrs. Black?

A. They walked up to the corner and waited for me up by the depot.

Q. After you came out of her place you caught up with them, did you? A. Yes, sir.

Q. How many blocks is it from the saloon to your place? A. About six blocks.

Q. And you got home then by twelve o'clock?

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(Deposition of Don H. Dickinson.)

A. Yes, sir.

Q. What time did you go to bed?

A. Went to bed as soon as I got home.

Q. Did you turn the light off when you went home? A. Yes, sir.

Q. It was all turned off, was it? A. Yes, sir.

Q. And the gasoline was kept outside the building under the back steps?

A. Inside the building under the back steps.

Q. Under the back steps. About how large was the entire building, Mr. Dickinson?

A. What is that?

Q. About how large is the entire building that the saloon is in? A. Inside?

Q. Well outside.

A. Well, I should judge about twenty-five by sixty-five.

Q. That would be outside measurement?

A. Yes, sir.

Q. About twenty-five foot frontage and sixty-five feet back. A. Yes, sir.

Q. One-story building? A. Two-story.

Q. Two-story building. What was upstairs?

A. Well, it was a poolroom.

Q. Was it running at the time you were there?

A. No, sir.

Q. Closed. The upstairs wasn't being used then at that time? A. No, sir. [143]

Q. Was anything stored up there?

A. Not to my knowledge.

Q. Did you explain to Mrs. Black that night why

(Deposition of Don H. Dickinson.)

you had quit earlier than usual, did you tell her you had quit earlier than usual on account of your wife being sick? A. No, sir.

Q. Didn't say that? A. No, sir.

Q. Did you ever tell anybody that, that you quit earlier because your wife was sick and wanted you to come home, you might have told somebody that, didn't you?

A. I believe I did one or two nights when there wasn't anything doing.

Q. Well, you might have told somebody that you quit on the night of the fire a little earlier on account of your wife being sick?

A. No, sir, not on the night of the fire, my wife wasn't sick then.

Q. How often did you go in the saloon prior to the time you started to tend bar there?

A. I used to go in to see Bill one or two nights a week."

Mr. LANGHORNE.—(Reading redirect examination:)

"Q. Mr. Dickinson, you stated that you were arrested for—or accused of setting the fire?

A. Yes, sir.

Q. When was that?

A. It was the morning of the 27th of June.

Q. Were you ever convicted? A. No, sir.

Q. Were you bound over to the Superior Court of Pacific County, Washington? A. No, sir.

Q. Weren't you permitted to go on your own recognizance? A. Yes, sir.

(Deposition of Don H. Dickinson.)

Q. Whatever became of that case?

A. I didn't hear any more about it.

Q. Were you ever informed it was dismissed by the prosecuting attorney of Pacific County?

A. No, sir, I didn't know a thing about it until you told me about it.

Q. Well, you were informed then, were you?

A. Yes, sir.

Q. When was it that you were informed that the same was [144] dismissed?

A. It was way in December.

Q. Well, tell the year.

A. I think it was December, 1912.

Q. Was the deputy prosecuting attorney, Wright, there at Long Beach the night of the fire?

A. I think he was.

Q. Was he one of the first ones that came with the marshal to yourself at the time of the fire?

A. Yes, sir.

Q. Was there an endeavor when he was there with the marshal to compel you to admit that you had set the fire?

Mr. COLE.—I object to that as not proper redirect examination.”

The COURT.—Objection overruled.

Exception allowed.

Mr. LANGHORNE.—(Continuing reading:)

“Mr. BRUMBACH.—I would like to show there was a kangaroo Court there.

A. He tried to make me admit, yes, sir.

Q. How far was it from the saloon building to Mr.

(Deposition of Don H. Dickinson.)

Black's residence? A. About fifty feet.

Q. What direction?

A. Right across the track, northeast.

Q. Isn't it a fact that the burning of that saloon would endanger his rooming-house or residence?

Mr. COLE.—I object to that as not proper redirect examination."

The COURT.—Objection overruled.

Exception allowed.

Mr. LANGHORNE.—(Reading:)

"A. Yes, sir.

Q. The night or evening before the fire you paid Mrs. Black the receipts just the same as you had done every day? A. Yes, sir.

Q. Was the Black saloon a one or two story building? A. Two story.

Q. Was there any liquors or cigars or other personal property or stock stored upstairs?

A. Not to my knowledge.

Q. What time of the year is the business there of a saloon-keeper most profitable? [145]

A. Starts in about the third of July.

Q. About the third of July? A. Yes, sir.

Q. At the time you were in charge was that during the profitable summer season? A. No, sir."

Mr. COLE.—(Reading recross-examination:)

"Q. Were the cigars kept in the show case, Mr. Dickinson?

A. They were up in a little show case, yes, sir.

Q. They were all kept in the show case, were they, didn't have any stored in the back room?

(Deposition of Don H. Dickinson.)

A. Not to my knowledge.

Witness excused." [146]

[**Testimony of William Black, in His Own Behalf.**]

WILLIAM BLACK, plaintiff herein, having been first duly sworn, testified in his own behalf as follows:

Direct Examination.

(By Mr. LANGHORNE.)

Q. State your name. A. William Black.

Q. Where is your residence?

A. Long Beach, Washington.

Q. How old are you? A. Fifty-eight.

Q. How long have you resided in the State of Washington?

A. Well, off and on for twenty-seven or twenty-eight years.

Q. Where did you come from when you came to this State? A. The first time?

Q. Yes. A. Nevada.

Q. Where were you born? A. Texas.

Q. What has been your occupation of recent years?

A. Formerly locomotive engineer for thirty years.

Q. What was your occupation in 1912?

A. Saloon-keeper.

Q. How long have you been in the saloon business?

A. About nine or ten years; something like that; I cannot say for sure.

Q. How long have you been in the saloon business in Pacific County? A. For that time.

Q. Where did you first commence running a saloon? A. Ilwaco, Washington. [147]

(Testimony of William Black.)

Q. How long did you run a saloon there?

A. Four or five years.

Q. When did you move to Long Beach?

A. I think it was in 1908.

Q. How long did you run a saloon there?

A. In Ilwaco?

Q. No, in Long Beach.

A. Probably four or five years.

Q. Well, up to the time you burned out?

A. Oh, at Long Beach, from 1908 up to the time I was burned out.

Q. What sized town is Long Beach?

A. It is a scattered town. It is a beach, bathing resort; the town is scattered.

Q. About what is the population of the town?

A. In the fall, after the bathing season?

Q. Normally.

A. Normally, oh, probably two hundred and fifty or three hundred and fifty.

Q. Tell the jury why you were running a saloon there? A. About a block above the depot.

Q. I say why were you running a saloon there?

A. To do business, to sell goods.

Q. What is Long Beach noted for?

A. For summer visitors, bathers and so on.

Q. Is it on the ocean? A. Right on the ocean.

Q. How long does this summer season last down there? A. About three months.

Q. Tell the jury whether or not vast numbers of people congregate [148] there during the summer months.

(Testimony of William Black.)

A. Yes, great numbers gather there; it is according to the times,—some years there is more and some years less. It depends upon the condition of the country, the financial condition.

Q. Tell the jury where your saloon was located in the town, as near as you can.

A. Right on the west side of the railroad track about a block north of the depot.

Q. You speak of the depot. Is there a railroad connection with Long Beach?

A. Yes, from Meglers on the Columbia River.

Q. And then where does it run to from Meglers?

A. Nahcotta. That is the northern terminus on shoal water bay.

Q. That is a railroad confined to Pacific County?

A. About thirty miles long, a narrow gauge railroad, yes.

Q. You had a policy issued to you on your stock of goods in June last year, did you?

A. I think so. I think that is the time, in June, sometime in June.

Q. Well, it is the date that the policy bears, is it?

A. What is it?

Q. It is the date that the policy bears, isn't it?

A. Yes, the same date that is on the policy.

Q. Who issued that policy of insurance to you?

A. Henry Kayler, the insurance agent at Long Beach.

Q. The insurance agent for what company?

A. For this National Insurance Company.

Q. The defendant in this action? [149]

(Testimony of William Black.)

A. The defendant in this action, yes, sir.

Q. Was that saloon and contents ever destroyed by fire?

A. Never was, no, sir—before—oh, I don't get your question.

Q. Was the saloon and contents destroyed by fire? A. Totally destroyed.

Q. When?

A. On the 27th of June, on the night of the 27th.

Q. Of what year? A. 1912.

Q. You heard the testimony of Mr. Madge this morning, did you? A. Yes, sir, I did.

Q. As to the character and quality of the goods you carried in your saloon at Ilwaco?

A. Yes, sir.

Q. Tell the jury how the character and quality of your goods, carried by you in your saloon at Long Beach compared with the character and quality of your goods in Ilwaco?

A. I generally bought large quantities of bonded liquors—(interrupted).

Q. Just tell the jury whether or not the character and quality of the goods you carried at Long Beach, how they compared with the goods in the saloon at Ilwaco?

A. Kept up the same standard. I bought the best liquor I could get.

Q. Tell the jury why you did that.

A. Well, I tell you, when I first started in the liquor business, I was forced into it. I loaned a man some money—I was running an engine at the

(Testimony of William Black.)

time, and I loaned \$1800.00 to an old friend, but in the meantime he did not make a [150] success—he was not making a success—(interrupted).

Mr. COLE.—I object to that on the ground that it is immaterial.

The COURT.—You are not answering the question.

Mr. LANGHORNE.—Yes, that is right.

Q. Just tell the jury why you bought the character of goods you bought at Long Beach.

Mr. COLE.—I do not think that makes any difference, whether he bought it for himself or was forced to do it.

The COURT.—Objection overruled. There is an explanatory circumstance.

A. Because the class of goods I handled was not handled generally by other saloons. Half the saloons did not handle the class of liquors I handled. I wanted to handle good goods and I thought that was the only way to make a success.

Q. Did the trade that came down there in the summer have anything to do with the class of goods you bought? A. Yes, sir.

Q. In what respect?

A. After the people got to knowing the class of goods I kept—in Portland and other places, and in place of going to some other beaches, they would come down to that beach, especially the liquor drinkers, fellows that wanted a good quality of liquor, it brought lots of them down there, a good many of them.

(Testimony of William Black.)

Q. What kind of a building was this you used for a saloon building at Long Beach?

A. This was a two-story frame building.

Q. Did it have any additions to it? [151]

A. Why, it had a porch, a kind of a fancy porch on the back end.

Q. Did it communicate with any other building?

A. No other building, no, sir.

Q. Where was your residence?

A. Fifty feet across the street. I owned a hotel there.

Q. Did you have any insurance on that?

A. Not a cent.

Q. Tell the jury something about the kind and character of the hotel that you kept within fifty feet of this saloon building.

A. Well, I did not run exactly a hotel. My wife runs it. I did not run it. It is a rooming house. It had been a hotel. We just rent rooms. We do not run a hotel. It contains twenty-two rooms.

Q. How many stories? A. Two stories high.

Q. You say that was how far away?

A. Fifty feet.

Q. Was it furnished?

A. Completely furnished.

Q. Each room in it furnished?

A. Each room in it furnished, yes, sir.

Q. Was there any insurance on the contents of the hotel? A. Not a thing.

Q. Was it destroyed by fire?

A. No, sir, but they had a very hard time saving

(Testimony of William Black.)

it. It was blistered up, and broke the windows, some large windows about as large as those windows there (indicating). Blistered the sides and I had to have it painted and fixed [152] up.

Q. Now, getting into the value and extent of this stock. You heard me read the deposition this morning, did you not, of Mr. W. E. Hull of Clarke Brothers Distilling Company of Peoria, Illinois, in which Mr. Hull testified that if any liquors had been sold to you by that firm it was not direct from the distillery but through a jobber? A. Yes, sir.

Q. Did you ever buy anything from them?

A. Yes, sir.

Q. What was it? A. Two barrels of liquor.

Q. What is that paper that you hold in your hand?

A. That is a straight bill of lading, original.

Q. From what jobber did you buy?

A. Well, I bought this from the representative of this company.

Q. Where is he at? Who is he?

A. His name is Mr. Solomon.

Q. What firm did he represent?

A. A firm by the name of Hill.

Q. Clinton Hill? A. Yes, sir.

Q. Of what city? A. Seattle.

Mr. LANGHORNE.—I will offer this in evidence.

Mr. COLE.—I object to that on the ground that it is immaterial. It does not say whether that was Clarke Brothers whiskey on the bill of lading. It might have been [153] some other whiskey. If

(Testimony of William Black.)

he can testify from his own recollection that he bought it from those people, I think it would be competent, but I do not think the bill of lading is competent.

Objection overruled. Exception allowed.

Whereupon said bill of lading was admitted in evidence and marked Plaintiff's Exhibit 4 of this date.

Q. Now, you signed and swore to a proof of loss, did you, Mr. Black? A. Yes, sir, I did.

Q. I presume that is your signature (indicating)?

A. Yes, sir.

Q. Who made the proof of loss?

A. Mr. Kayler.

Q. What is the extent of your education, Mr. Black? A. Well, I can read and write.

Q. Did you ever attend school very much in your youth?

A. No, sir, I never went to school very much. What little I got, I picked up myself, but I can read and write some.

Q. On this proof of loss, there are several items which the Court has ruled, and which your counsel concedes, are not covered by the policy of insurance. At the time they were included in this proof of loss, tell the jury whether or not you believed that the policy covered those things?

Mr. COLE.—I object to that as immaterial and irrelevant. Objection overruled. Exception allowed.

A. I tell you I never had no experience of this

(Testimony of William Black.)

kind before—(interrupted).

The COURT.—Answer the question. [154]

Q. Answer the question. If you believed those things were covered by your policy? A. Yes, sir.

Q. You know what they consisted of?

A. Glasses and different things that you would use in a saloon, measures and funnels and glassware, and all that stuff, beer pumps, coils.

Q. I will ask you if you had in the saloon at the time it was burned five barrels of Old Crow whiskey?

A. Yes, sir.

Q. I will ask you if you had in the saloon at the time it was burned four barrels of Cedar Brook whiskey? A. Yes, 1903.

Q. What was the Old Crow? A. 1905.

Q. Or 1906, which? A. 1905 or 1906.

Q. Did you have three barrels of Green River whiskey?

A. Three barrels of Green River whiskey, 1902.

Q. Did you have three barrels of Penwick Rye?

A. Three barrels of Penwick Rye, 1904.

Q. Did you have a barrel of Old Crow of a different year?

A. I had a barrel of Old Crow 1899, one hundred and twenty proof.

Q. One barrel of Fox Mountain?

A. One barrel of Fox Mountain, 1896, one hundred and twenty-seven proof.

Q. Two barrels of McBryer Single Stamp whiskey? A. Yes, sir, I did.

Q. Did you have one barrel of Wicklow whiskey?

(Testimony of William Black.)

[155] A. Yes, I did.

Q. Did you have one barrel of California port wine? A. Yes, one barrel of port wine.

Q. In answer to a question you spoke of one hundred and twenty proof. What do you mean by that?

A. As the liquor ages, and the fusel-oil evaporates or leaves it, the proof runs up. The proof and the age is what makes the quality of the whiskey.

Q. It would take me all of the rest of the day to go over this item by item, so I will ask you the general question. Did you have all of these articles in the saloon at the time of its destruction by fire?

A. At the time the invoice was taken, I had all them goods (indicating), he might have sold a few of them when I went away, after I got sick and went away to Portland.

Q. Was any of that ever removed from the saloon after the invoice was taken?

A. Not to my knowledge.

Q. Did you have any articles in the saloon that were not listed in the proof of loss? A. Yes, sir.

Q. Where were they? A. They were upstairs.

Q. What did they consist of?

A. Well, there was a fellow that was sold out at a sheriff's sale by the name of J. B. Knight, and I bought the stock.

Q. What did you pay for it? A. \$350.00.

Q. Did you receive any paper from the sheriff?

A. Yes, a sheriff's bill of sale. [156]

Q. Look at that and state whether that is the paper you received (indicating).

(Testimony of William Black.)

A. Yes, that is it.

Q. Was there a lot of cigars that were contained in the purchase made by you from the sheriff?

A. Yes, sir.

Mr. COLE.—I object to that on the ground that he is leading the witness and move that the answer be stricken.

Objection sustained.

Q. State what was in the purchase made by you at the time of the sheriff's sale.

A. What it consisted of?

Q. Oh, yes, generally.

A. Well, the stock that is usually in a saloon, whiskeys, wines, gin, cigars—(interrupted).

Q. You spoke of cigars. About how many cigars did you get?

A. Well, I do not remember how many cigars. I know there was a number of cigars.

Q. Well, about?

A. Perhaps seven or eight hundred, probably.

Q. Did you put those upstairs or downstairs?

A. No, sir, I put them with the other cigars in my stock.

Q. That is what I am driving at. You put them down among—(interrupted).

A. I put them down among the other cigars.

Q. I wish you would tell the jury about what was the value of the goods you lost by fire, about how much was the value of the goods you lost by fire, not including these articles that the Court holds are not covered by the policy of insurance? [157]

(Testimony of William Black.)

Mr. COLE.—I object to that. It is not shown that he is competent or familiar with that.

Objection overruled. Exception allowed.

Q. Just answer the question.

A. Do you mean the stock?

Q. Yes.

A. The liquor stock and the cigars?

Q. Yes.

A. I think I lost between eight or nine thousand dollars.

Mr. COLE.—I move that this testimony in regard to the value of this stock be stricken out on the ground that it is not shown that that is the market value of the property. He is only entitled to recover the market value of it. That is not shown to be the market value of it. That is his opinion, that testimony, in regard to that stock, and I move that it be stricken out.

The COURT.—Motion granted. You will have to confine it to the market value of the goods lost.

Q. What was the market value of the goods lost by you in this fire on June 27th, 1912?

Mr. COLE.—I object to that. It is not shown that he is qualified and familiar with the market value.

Objection overruled. Exception allowed.

A. I had some whiskey that was not on the market.

Q. Just answer the question, and we will talk about that afterwards. Just state what in your opinion was the market value of the goods lost by you in the fire on June 27th, 1912?

(Testimony of William Black.)

A. Well, I consider that I lost over eight thousand dollars, the market value would be eight thousand dollars and more. [158]

Q. What I mean is what could you have sold that stock of goods for, on the open market, what would have been its value, its fair price, a fair price from somebody that wanted to buy and did not have to buy, to someone that wanted to sell but did not have to sell, now, what would be a fair, honest, market price for that stock of goods as it existed there?

A. Eight thousand dollars.

Q. Did some barrels of whiskey come in there just prior to the fire? A. Yes, sir.

Q. How many?

A. Two, right prior to the fire, about a month or two before the fire.

Cross-examination.

(By Mr. COLE.)

Q. You did not make any claim for this that just came in, you did not put that in your proof of loss, this that came in just before the fire?

A. I do not remember whether that was in the proof of loss or not. They were lying down on the floor. There was not room to put them up on the racks.

Q. You moved over from Ilwaco about the 1st of July, 1908, did you not? A. What is that?

Q. You moved over from Ilwaco about the 1st of July, 1908, did you not? A. Well, about that time.

Q. How long did you live in Ilwaco?

A. Several years. [159]

(Testimony of William Black.)

Q. You were refused a license in Ilwaco, were you not, on account of the character of place you were running?

Mr. LANGHORNE.—I object to that on the ground that it is immaterial.

Mr. COLE.—I think it is proper cross-examination; it would affect his credibility.

The COURT.—The objection is sustained. If you want to show he has been convicted of a felony, that would affect his credibility, but you cannot rake and scrape his life fore and aft about what he has done or has not done.

The WITNESS.—I have been in jail in Old Mexico. I can tell you about that.

Q. Were you convicted in the Dalles?

A. No, sir; I was never convicted of a crime in this country, and I have never been in jail in this country.

Q. Were you not in jail when you were arrested for shooting a man over at Ilwaco?

A. No, sir; I was arrested, but—(interrupted).

Q. You were not in jail? A. No, sir.

Q. What time did your license expire at Long Beach, Mr. Black?

A. I think it was in July, 1912; I would not be sure.

Q. It was in July, 1912? A. Yes, sir.

Q. And you knew, of course, that there had been a remonstrance filed by the citizens of Long Beach against its being continued?

A. I did not know anything about that; I knew

(Testimony of William Black.)

there were parties after me there. [160]

Q. You knew that one of the people was circulating a petition before your license expired? To have it refused July 1st?

A. There had been two of them, different years.

Q. Were you not given to understand by the commissioners that there was no need of your applying again?

A. There was no objections to my receiving a license; I was never informed that it would be refused.

Q. There was a remonstrance filed against it?

A. Not that I know of.

Q. You were never told about it? A. No, sir.

Q. You do not know whether there was or not?

A. I never heard of it if it was.

Q. You would not swear there was not?

A. I never heard of it.

Q. Why did you move from Ilwaco to Long Beach?

A. For business.

Q. How is that? A. More business.

Q. You thought you would get more business.
You moved some goods from Ilwaco to Long Beach?

A. Yes, sir.

Q. You moved these three barrels of Green River whiskey that you make claim for?

A. I moved five barrels of Green River.

Q. You moved some other whiskey too?

A. Five barrels of Penwick Rye.

Q. That is the liquor you bought from Blumaer & Hoch in Portland?

(Testimony of William Black.)

A. That came right direct from the distillery.
[161]

Q. That cost you about a hundred dollars a barrel? A. Over that.

Q. In 1909? A. 1909?

Q. Yes.

A. No, sir; I never bought it from Blumaer & Hoch. I bought that before the earthquake.

Q. When Blumaer & Hoch testified that they sold you five barrels of liquor in 1909, they were mistaken, they were wrong?

A. I thought you had reference to five barrels of liquor in 1899.

Q. I mean five barrels in 1909?

A. That was at Long Beach.

Q. And you paid a hundred dollars a barrel for it?

A. I do not know exactly what I did pay.

Q. You heard Blumaer & Hoch's testimony that that was about what it was, about a hundred dollars per barrel, five hundred dollars for five barrels?

Mr. LANGHORNE.—That does not include freight or warehouse charges from Louisville, Kentucky.

Q. Freight would not be very—(interrupted).

A. Seventeen and a half cents a gallon from Louisville, Kentucky.

Q. You paid two dollars and sixty-five cents a gallon to Blumaer & Hoch, and the freight, seventeen and a half cents more, that would be about two dollars and eighty-three cents a gallon?

A. I guess so.

(Testimony of William Black.)

Q. Do you say that these barrels that cost you a hundred [162] dollars are now worth two hundred dollars a barrel, at the time of the fire?

A. I have aged that whiskey. I have not sold any of that whiskey.

Q. You bought it in 1909 and it was destroyed in 1912, do you mean to state to this jury that that whiskey doubled in value from the time you bought it until it was destroyed?

A. Well, it cost me over a hundred dollars a barrel.

Q. It didn't cost you much more? A. Yes, sir.

Q. It didn't cost you a hundred and ten dollars a barrel? A. Yes; and then some.

Q. How much?

A. Freight—(interrupted).

Q. The freight was sixteen cents a gallon?

A. Seventeen and a half cents a gallon.

Q. How many gallons in a barrel?

A. Forty-six or forty-seven.

Q. How much did you pay for it if you paid more than a hundred and ten dollars a barrel?

A. You must remember that that whiskey aged in the evaporation which took place—(interrupted).

Q. I am not talking about age. You contend that it would increase from a hundred and five dollars a barrel to two hundred dollars a barrel in three years?

A. It cost more than a hundred and five dollars a barrel.

Q. How much more than a hundred and five dollars a barrel? A. I never figured up.

Q. Do you mean to say that the cost you paid

(Testimony of William Black.)

Blumaer & Hoch, [163] plus freight from Louisville, Kentucky, would be more than a hundred and five dollars? A. That is what I valued it at.

Q. You do not know that it was worth two hundred dollars a barrel at the time it was destroyed?

A. I could have got that for it.

Q. Where? A. I could have sold it.

Q. You bought it in 1909?

A. 1908 or 1909, I do not remember.

Q. You shipped over the Ilwaco railroad from Ilwaco to Long Beach? A. Yes, sir.

Q. And you shipped all of your liquors that you had in Ilwaco over there, didn't you?

A. I had some hauled by wagon. The car would not hold it all, and I—(interrupted).

Q. How much did you haul by wagon?

A. Oh, probably—I think it was six barrels—I disremember now. I think it was six barrels.

Q. And how many did you have in the car?

A. Well, I had the car filled with case goods and barrels.

Q. How many cases in the car, do you remember?

A. No, sir; I do not.

Q. Do you mean to tell this jury that you had more goods than you could put into a car?

A. I had more goods than I could put into that car, yes, sir; that is what I mean to tell you.

Q. Who hauled them over for you?

A. Some teamster there. I disremember now who it was. [164]

Q. How did you send the liquor already described, by car or team?

(Testimony of William Black.)

A. I wish to state to the jury that I had different ages than Old Crow.

Q. You had the five barrels you had from Blumaer & Hoch and one other barrel?

A. That was 1895, I think—well, it was 1895, and then I had—(interrupted).

Q. How many barrels did you have of liquor?

A. I had some 1905 and then I had some 1889 of liquor.

Q. You had six barrels then, did you?

A. Yes, sir.

The COURT.—1889 or 1899?

A. I had 1899 and 1905 or 1906 liquor, I do not remember which.

Q. Did you send this liquor over there by team or railroad? A. This liquor?

Q. Yes.

A. Came by train; came with the rest of my goods.

Q. All of it came by train? Did you send Green River by train?

A. Yes, and the Penwick Rye by train.

Q. And you sent your case goods by train?

A. Yes, sir.

Q. That was the Ilwaco Railroad Company?

A. The Ilwaco Railroad Company.

Q. That was in the year 1908? A. Yes, sir.

Q. And you made affidavit in your proof of loss that these [165] barrels were untapped, these five barrels—four barrels of liquor?

A. Yes, there was four barrels untapped and one I tapped.

(Testimony of William Black.)

Q. And three barrels of Penwick Rye you swear were untapped? A. Yes, sir.

Q. In your proof of loss you claim one barrel of Box Mountain whiskey, not tapped, four hundred dollars. Where did you buy that barrel?

A. I bought it from Brown, Foreman & Company.

Q. What did that cost you?

A. I think that was six or seven and a half a gallon.

Q. You heard Brown & Foreman's testimony as to what you paid for it? A. Yes, sir.

Q. How many gallons was there in that barrel?

A. I do not remember.

Q. Is it not a fact that you did not pay only a hundred and fifty dollars for that barrel of whiskey or about that much?

A. I paid more than that for it.

Q. Is it not a fact that you paid less than two hundred dollars for that barrel?

A. I was offered ten dollars a gallon for that whiskey.

Q. What year did you buy that whiskey? Didn't you buy that in 1911? A. I think I did.

Q. Well, that was not very old?

A. Why, certainly it was.

Q. It was old when you got it?

A. It was old when I got it. [166]

Q. How did you happen to get it so cheap?

A. A friend of mine got it for me—they found that afterwards; they found it in their warehouse and did not know that they had it.

(Testimony of William Black.)

Q. Brown & Foreman Company friends of yours?

A. They are; yes, sir.

Q. They are in the wholesale liquor business?

A. They are distillers.

Q. Who is your friend in that company?

A. Why, their agent.

Q. What is his name? A. His name is Walton.

Q. Do you mean to tell this jury that barrel of liquor you bought in 1911 for less than two hundred dollars a barrel, was worth four hundred dollars?

A. I tell you, gentlemen, I could have put a big price on that liquor. That was a rare piece of goods. I would sell no one a bottle of it. Now, that barrel was tapped; it was not untapped, but it had only been tapped a little while, and there was very few people that ever took a drink out of it. I sold it for twenty-five cents a drink.

Q. Who were some of the people you sold out of it?

A. Very few.

Q. If it was not untapped, why did you swear in your proof that it was untapped?

A. Well, I had just tapped it.

Q. Is it not a fact that you had been selling out of it ever since you got it? A. No, sir. [167]

Q. Did you ever sell Mr. Peter Waller any of it?

A. No, sir; I do not believe that Mr. Waller ever bought that kind of liquor.

Q. Is it not a fact that this Penwick Rye that you bought from Blumaeer & Hoch you paid them a hundred dollars a barrel for it?

A. It cost over a hundred dollars a barrel.

(Testimony of William Black.)

Q. Not more than a few cents.

A. I had that a number of years.

Q. When Blumaer & Hoch say that they sold you five barrels for five hundred dollars, are they stating the truth or not?

A. If they said so that is all right.

Q. And about the Penwick Rye, when they testify that they sold you that for a hundred dollars, are they right or wrong?

A. If they said I paid a hundred dollars for it, that is what I paid for it.

Q. The price they testify to is the price you paid for it? A. I guess it is, less freight.

Q. Do you contend that this whiskey you bought for a hundred dollars a barrel in 1907 was worth at the time it was destroyed two hundred and fifty dollars a barrel? A. Yes, sir, I do.

Q. You want the jury to believe that, do you?

A. Well, I cannot help it. I aged that whiskey and I considered it was worth that much money. It was not for sale. You could not buy it from the distillery; it was not sold in bulk any more. It was all bottled in bond and I had been offered seven dollars a gallon for it [168] right there in the bar-room by William Locke, a jobber.

Q. He is a friend of yours?

A. No more than any other salesman or traveling man.

Q. Did you count the number of cases in this proof of loss?

A. When I took the invoice, we counted every-

(Testimony of William Black.)

thing, that is, downstairs.

Q. You counted everything and Mr. Kayler took it down? A. Yes, sir.

Q. Now, I would like to ask you where these case goods were kept?

A. The bulk whiskey was right in the front bar on the right, with the exception of three barrels untapped. That was in the back room.

Q. Three barrels, untapped, in the back room?

A. Three barrels, untapped, in the back room under the stairway. And these case goods were piled up in the back room. There is an archway there,—(interrupted).

Q. On the north side? A. Yes, sir.

Q. Mr. Dickinson testified right after that that they were piled up on the north side. How large was a case of goods, about two by two and a half feet by eighteen inches?

A. Something like that, yes, sir. About fourteen inches high. They hold a dozen of those goods.

Q. Did you count the number of cases you made claim for here in your proof? A. Yes, sir.

Q. How many?

A. There was a hundred and fifty-seven cases piled up in that [169] room.

Q. On the north side? A. Yes, sir.

Q. You want the jury to believe that?

A. Yes, sir, I do. And there were three large show cases; one case as you came into that building, a black walnut case containing nothing but imported bottled goods, and there was two other large cases

(Testimony of William Black.)

full, twelve cases to a case, making a total of a hundred and ninety-three cases.

Q. Do you know how many cases you bought since you were in business including in Ilwaco?

A. I never kept track. One brand of liquor, there would be a run on it, and then they would quit and they would want some other class.

Q. You left Long Beach on the 24th of June, did you? A. On a Monday.

Q. What time in the morning?

A. On the six-thirty train.

Q. Where did you go? A. Astoria.

Q. What time did you get to Astoria?

A. On the arrival of the boat.

Q. About what time of the day was that?

A. Probably I arrived in Astoria at ten o'clock.

Q. Ten o'clock in the forenoon? A. Yes, sir.

Q. And you came to Long Beach on the Saturday preceding, did you not?

A. On a Friday; Friday evening.

Q. Mr. Dickinson was wrong when he said Saturday? [170]

A. He made a mistake; I came there Friday evening.

Q. Where did you come from?

A. I came from Portland.

Q. Had you been in Portland ever since you hired Mr. Dickinson? A. Yes, sir.

Q. And you went back to Long Beach?

A. Yes, sir.

Q. And when you left Long Beach on the morning

(Testimony of William Black.)

of the 24th, that Monday morning, did you tell Mr. Dickinson you were going to Portland?

A. I did not see Mr. Dickinson—I saw him Saturday and on Sunday he was home with his family.

Q. Did you have any talk with him as to where you were going?

A. I do not remember whether I did or not; I told him—(interrupted).

Q. Did you tell him you were going to Portland?

A. I told him I was going away; that I was going back.

Q. When he testified that you told him you were going to Portland, he was wrong?

A. I do not remember whether I told him or not. I do not remember with regard to that.

Q. You stayed at the Parker House in Astoria?

A. Yes, sir.

Q. Did you tell Parker that you just came from Seaside?

A. No, sir, I never told Mr. Parker anything of the kind.

Q. He is wrong?

A. Mr. Parker invited me to go down to Seaside the day after I got there, the next day after I got there.

Q. Did you leave Astoria from the time you got over there on [171] Monday morning?

A. Only to go to Seaside.

Q. What time did you go to Seaside?

A. I think I went to Seaside on the twenty-sixth.

Q. That was the day of the fire. What time did

(Testimony of William Black.)

you go to Seaside ?

A. I went down in the morning.

Q. What time did you get back ?

A. In the evening ; I arrived in Astoria about ten or eleven.

Q. Did you cross over to Ilwaco at any time while you were in Astoria ?

A. When I came there that Friday.

Q. I mean after you left Long Beach on Monday ?

A. No, sir.

Q. Is it not a fact that you crossed the river to Ilwaco and talked to Mr. Robert, to Mr. Rogers, who owns the mill at Ilwaco and Mr. Pattenay ?

A. It is a fact that Friday evening when I came across on the launch about six or half-past six in the evening, and when I came up to the dock I met Mr. Pattenay at the sawmill and Mr. Rogers and I talked with them ; yes, sir.

Q. That was on Friday evening ?

A. That was on Friday evening, yes, sir.

Q. You are sure about that, are you ?

A. Yes, sir, I am sure about that.

Q. What did you say to them ?

A. We were talking in a general way.

Q. How long did you stay in Ilwaco ?

A. Why, I left there. I talked to them and I left there.

Q. Did you take a train to Long Beach ? [172]

A. Oh, no.

Q. How did you get to Long Beach ?

A. I walked up.

(Testimony of William Black.)

Q. What time did you get into Long Beach?

A. Oh, it is about four miles up there. I guess I walked it in probably an hour and a half or so.

Q. What time did you see Mr. Pattenay?

A. About half-past six, I guess.

Q. How far did you say it is from Ilwaco to Long Beach? A. About four miles, I think, by road.

Q. Is it not further than that?

A. I do not think so; about four miles.

Q. Did you go down to the saloon Friday night?

A. I do not remember whether I did or not.

Q. You would not say whether you did or not?

A. No, sir.

Q. Do you know how late Mr. Dickinson kept open Friday night? A. I do not.

Q. Did he give you the money when he came home that night? A. Yes, sir.

Q. Gave you the money personally; did not give it to your wife?

A. No, sir, I was there and he gave it to me.

Mr. LANGHORNE.—What week are you talking about?

Mr. COLE.—This was on Friday preceding the fire. You said Mr. Dickinson gave you the money that night?

A. Yes, sir.

Q. When Mr. Dickinson testified, as you heard this afternoon, that he did not see you until Saturday he was wrong? [173]

A. It may have been Saturday. I do not testify

(Testimony of William Black.)

positively I saw him Friday night. I do not remember.

Q. Well, he gave you the money.

A. He gave it to me Saturday night, one night while I was there; he gave it to me, I think, Saturday night. I do not think I saw him Friday night.

Q. You did not see him the Friday night when he gave the money to your wife?

A. Probably did; I do not believe I saw him Friday night.

Q. What kind of a conversation did you have with Mr. Pattenay that evening crossing the river? Did you tell him you were going home? A. Yes, sir.

Q. What did you have in your hand?

A. Satchel.

Q. You told him you were going back to Long Beach? A. Yes, sir.

Q. Did you tell him you were going back to Astoria again?

A. I do not remember the conversation I had with him.

Q. You did not go down the main street?

A. Back street.

Q. And past the mill?

A. I took the back tracks; they were after me.

Q. You knew there was a warrant out for you?

A. You bet I did.

Q. Do you know who had it?

A. Well, I surmised who had it.

(Witness excused temporarily.)

(Court adjourned to 10 A. M., Oct. 22, 1913.)

(Testimony of William Black.)

WILLIAM BLACK, cross-examination continued.
(By Mr. COLE.)

Q. Did you do very much business down there, Mr. Black? A. I have, considerable.

Q. How much money did you take in per day, about?

A. Well, of course, the business fluctuated, in the summer it was pretty good, and the balance of the year, why, it did not amount to much.

Q. In the summer months when the tourists went down there, it was good business? A. Yes, sir.

Q. You didn't take in much during the winter?

A. No—(interrupted).

Q. How much would you take in?

A. Five or six or seven or eight dollars a day.

Q. Would not be three hundred dollars a month, would it?

A. Oh, it might run up to that sometimes.

Q. Would it average that much, do you think?

A. No, sir, it would not.

Q. About how much would you take in during the year? A. Well, I could not tell.

Q. Can you estimate it? A. No, sir.

Q. How is that? A. No, sir.

Q. You could not estimate it. You kept a cash register, did you? A. Yes, sir.

Q. You had a tape on the cash register, did you?

A. Yes, but I never put a tape on the register, never used it. [175]

Q. Did you take in \$500 a year? A. Yes, sir.,

Q. 1,000? A. Yes, sir.

(Testimony of William Black.)

Q. 2,000?

A. Probably \$1,700 or \$1,800 a year, probably more.

Q. Did you take in \$2,000? A. Probably so.

Q. 3,000? A. I do not think so.

Q. Did you take in 4,000? A. No, sir.

Q. You are sure about that, are you?

A. Yes, sir.

Q. About how much a day would you take in in the summer months?

A. \$25 or \$30 a day, some days.

Q. Around about \$800 or \$1,000 a month during the summer months, the hot weather?

A. I think the most I ever took in there was \$800 in one month.

Q. What month was that?

A. That was in the month of August.

Q. You went over there in July, 1908?

A. I believe that was the time, yes, sir.

Q. That was your best year, 1908?

A. That was a very good year.

Q. How about 1909? A. It was not so good.

Q. 1910? [176] A. Not very good.

Q. 1911? A. Pretty bad.

Q. Business kept getting worse, did it, from the time you moved over there?

A. As these other beaches opened up, there was not so many people came over there.

Q. You think around \$3,000 a year is what you sold?

A. I do not think I ever took in \$3,000 a year.

(Testimony of William Black.)

Q. You do not think you did?

A. No, sir, I am sure of it.

Q. How much did you take in then?

A. I might have possibly taken in between \$1,500 and \$1,800 a year, something like that.

Q. You think it was under \$2,000?

A. I think so. I never figured up; I never kept books; I could not keep them if I wanted to.

Q. You remember after this fire occurred, you remember telling the insurance representatives that you took in \$300 a month during the winter months?

A. I do not remember.

Q. You say you did not?

A. I did not say I did because I never took in \$300 a month during the winter.

Q. Where did you make your deposits?

A. The First National Bank of Astoria.

Q. The money you took in at the saloon, you deposited that money over there?

A. I had other business besides the saloon.

Q. What business? [177]

A. Different kinds, oyster business.

Q. Did you deposit all of your saloon money there?

A. No, sir, not all of it.

Q. Didn't you tell the representative of the company that they could go to the First National Bank in Astoria and see how much money you took in?

A. At their solicitation, if you want me, I will explain it.

Q. Go ahead.

A. The adjuster and another man came in my

(Testimony of William Black.)

place in January, the first time I ever saw him.

Q. 1913?

A. 1913, yes, sir. And they talked to me and wanted to know what I took in and so on and they wanted to know if I had any bills, and I showed them a box I had taken out of my safe of charred bills and checks and different things that I had in there, and they looked at them, and before they went away I told them I was willing to give them all the information I could, and they asked me if I would give them permission to go through my bank account in Astoria—asked me where I done business, and I told them Astoria, and they asked me for permission to go through my bank account in Astoria and I told them I would and I told them to write out an order and I would sign it, which they did. Now, that is the case exactly, that was the conversation.

Q. Didn't they ask you about how much your sales were?

A. I told them I never kept any books and could not give them—(interrupted).

Q. You told them you did a big business?

A. No, sir, I told them in the summer months business was [178] good but did not do much during the winter months.

Q. Didn't you tell them that it was not much during the winter months and you did not take in over \$300 a month?

A. I do not remember telling them anything of the kind because there was days that I did not take in \$1.50.

(Testimony of William Black.)

Q. You would not swear that you did not tell these representatives that?

A. I am sure I did not, because I never took in that amount of money in the winter months.

Q. When did business begin to pick up?

A. It would look up a little in June, when the people would commence to come down there to open up their summer cottages and so on.

Q. You do not agree with your bartender on that proposition. He said business did not begin to pick up until after the 4th of July.

A. Oh, yes, that is possible, but people commenced to come down there in June. It did not amount to much, but it was better than the rest of the year.

Q. Do you know how much money he took in while you were gone?

A. I believe that he took in about \$135 while I was gone, \$135 and something, I think that was the amount that he turned over to Mrs. Black.

Q. You are not positive?

A. I never put it down. I think that was the amount.

Q. You were gone about a month?

A. Yes, about a month.

Q. You heard his testimony that he took in about \$8 or \$10 per day and on Saturdays about \$20?

A. If there was a dance there on Saturday—(interrupted). [179]

Q. Did you take in any more on Saturday than on week days? A. If there was a dance he would.

(Testimony of William Black.)

Q. Did you hear him testify that he took in about \$300 that month?

Mr. LANGHORNE.—I object to counsel trying to get this witness to pass upon the credibility of other witnesses.

Mr. COLE.—The bartender says he took in \$300 a month and he claims he only turned in about \$135.

The COURT.—It is preliminary. It is simply to refresh his memory, concerning somebody else's statement.

Mr. LANGHORNE.—He is asking what somebody else swore.

Objection overruled. Exception allowed.

Q. This statement of your bank deposit from January 1st, 1912,—this is it, isn't it? (Indicating.)

A. I do not know anything about that; I had other business besides the saloon business. I did not make my money out of the saloon business; that did not keep me.

Q. I am not asking you about that. I am asking you if those were your deposit slips?

A. I guess that is right. I have done business with them about fifteen years.

Q. It appears here that up to the time of the fire you deposited about \$300 a month more than you did after the fire. Don't you think then that probably was about what you took in?

A. I might explain that to you. I loaned a party some money and another party who is present here right now, bought a piece of property from me, and he gave me a mortgage, and I sold that mortgage to

(Testimony of William Black.)

a woman by the name of Mrs. Culberson. [180]

Q. What has that got to do with it?

A. Well, that money went to the bank.

Q. How much was that?

A. Oh, five or six hundred dollars, something like that. I did not have it all at the bank, I kept some of it. I keep money around in my pockets. My pockets are not empty all the time. I had to have some money; I was doing different business.

Q. Will you explain how it is you deposited about \$300 a month more before the fire than afterwards? Isn't it a fact that you took in that much money out of the saloon?

A. You must remember my wife ran a lodging-house.

Q. She ran it when the saloon was running?

A. There was a good many people took beds that did not drink whiskey, and then we had some rents coming in too.

Mr. COLE.—I would like to offer this in evidence.

Mr. LANGHORNE.—Without any proof of who made it or what it is? I do not know who made this, or what it is, or what it purports to be.

The COURT.—I understood the witness qualified it when he said he supposed it was all right.

Mr. LANGHORNE.—This purports to be a statement of the bank, the First National Bank of Astoria—(interrupted).

The WITNESS.—I wish to state that my wife has \$95 a month coming in from rentals.

Q. You deposited that? A. Yes, sir.

(Testimony of William Black.)

Q. Before the fire and after?

A. Before the fire and after.

Mr. LANGHORNE.—May I ask your purpose in offering this in [181] evidence?

Mr. COLE.—I want to show what his sales were.

Mr. LANGHORNE.—That they were about \$300 a month?

Mr. COLE.—Yes, sir.

Mr. LANGHORNE.—All right, put it in evidence. I have no objections, if that is what you want to prove.

Whereupon said statement was admitted in evidence and marked Defendant's Exhibit "B" of this date.

Q. You took in about \$300 a month during the winter months—(interrupted).

A. I told you I did not do any such a thing. I never told you that nor any other amount.

Q. You do not agree with the bank statement?

A. The bank never made no statement that I made that money in the saloon business.

Q. Explain how you got this money.

A. I am trying to explain that I had other sources of income. I loaned money to people.

Q. Explain how your income dropped off after this fire.

A. My income has not dropped off after this fire.

Q. How do your deposits drop off after the fire?

A. I was doing business—(interrupted).

Q. I am asking you to explain why your deposits dropped off after the fire, after you quit selling

(Testimony of William Black.)

liquor. If you were not selling \$300 worth a month, how did your bank deposits happen to fall off?

A. I did not deposit all of my money in the bank. I was in other business and I had to make a living at something else. I got no interest for that money in the bank; [182] they paid no interest. That is why it dropped off, probably, then of course if I did not have no saloon money, I did not send that in. I had to make a living some other way.

Q. Do you know how much a barrel of whiskey will evaporate in six years? A. Yes, sir.

Q. How much?

A. It all depends upon the condition of the warehouse and how it is kept, the temperature and everything.

Q. Is not there a standard amount?

A. The Government allows four and a half gallons in eight years, but it will run away over. I have got whiskey that evaporated fourteen and fifteen gallons.

Q. In eight years?

A. Yes, and I have paid a tax on it.

Q. The Government allows how much?

A. I think four and a half gallons.

Q. You are not sure?

A. I am not sure, it is something like that; I would not be positive.

Q. Is it not a fact that liquor will evaporate about thirteen and a half gallons in six years in wooden barrels?

A. More, sometimes, it all depends on conditions.

(Testimony of William Black.)

Q. That is the standard average?

A. There is no standard—now, I want to explain to you; you take liquor in a store right here on Pacific Avenue in a building that has a temperature, it would not evaporate, the evaporation would be very small per year. The greatest evaporation is the first year, and then it [183] decreases as it gets older.

Q. Then you do not know the amount allowed by wholesalers for evaporation, the standard amount?

A. The Government evaporation, I think, they allow about four and a half gallons.

Q. You swear to that?

A. No, I do not know. I am not positive about it. I think it is about that; I have read it but I am not—(interrupted).

Q. You are not familiar with those figures at all. Do you know what the market price of 1906 Old Crow was in June, 1912? The market price?

Mr. LANGHORNE.—Wholesale, distillery or where?

Mr. COLE.—I am asking the market price being asked by wholesalers for Old Crow in June, 1912.

The WITNESS.—I don't know.

Q. Do you know what the market price of McBryer's was in June, 1912? A. No, sir, I do not.

Q. Penwick Rye? A. I do not.

Q. Green River? A. You could not buy it.

Q. You would swear that you could not?

A. Yes, you could not buy it.

Q. In your proof of loss, you made a claim for a barrel of Fox Mountain Whiskey. I will ask you if

(Testimony of William Black.)

you bought that from Brown-Foreman & Company?

A. Yes, sir.

Q. And you paid for that whiskey \$162.43? That was the [184] testimony of the company?

A. I guess so; I guess that is it.

Q. You claim now \$400 for it, and you bought that liquor in 1911?

A. I was offered \$10 a gallon for that whiskey. It was a pick-up.

Q. I am not asking you that. I am asking you if you claim \$400 for liquor that you bought in 1911?

A. Yes, but—(interrupted).

Q. On your proof of loss, you asked \$400 for that barrel of liquor? A. Yes, sir.

Q. And you tapped it and took some out of it?

A. No liquor sold out of that barrel. I had given some—let some people taste it, but it was over one hundred and twenty proof.

Q. You will swear that you never sold any whiskey out of that barrel?

A. Never sold any of that out of that barrel—(interrupted).

Q. Didn't you testify yesterday you sold some at twenty-five cents a drink?

A. I was going to sell that at twenty-five cents a drink.

Q. Is not that what you testified to yesterday?

A. There was a few people tasted that whiskey; I never sold any of that whiskey.

Q. You made the claim to the insurance company for three barrels of Green River and three barrels

(Testimony of William Black.)

of Penwick Rye, untapped? A. Yes, sir. [185]

Q. You heard Mr. Madge state on the stand yesterday that when he inspected your liquor that it was all tapped, and you had this Green River and this rye on hand when he inspected your place?

A. I never heard Mr. Madge say that the Penwick Rye and the Green River was all tapped.

Q. You heard him say it was all tapped?

The COURT.—He has answered that question. There is no use repeating questions.

The WITNESS.—I never heard him say so.

Q. You did not hear him say these particular brands were tapped?

A. I have made a specialty of handling Green River for years.

Q. Is it not a fact that you told the insurance company when they asked you to produce papers, invoices and bills, that your bills were all destroyed in the fire? A. Yes, sir.

Q. And they also asked you to produce your bills of purchase, inventory and invoices, and certified copies if you had lost the originals?

A. I furnished the insurance company with what I had.

Q. Answer the question. They asked you to furnish those bills and invoices, and if you did not have them to get certified copies of the bills of purchase.

A. I do not remember the letter. I know I gave them all I had, the best I knew of, what I could find.

Q. You told them that your papers were all burned up in the safe? A. Yes, sir.

(Testimony of William Black.)

Q. What was this bundle of papers you were telling about [186] taking out of the safe a while ago?

A. They were all charred. The adjuster saw them, most of them.

Q. Now, you testified yesterday that you had Mr. Kayler write your letters about the sale you were negotiating. Did he ever write any letters for you?

A. He has done lots of business for me.

Q. You wrote all of the letters to the general agents of the insurance company at Portland about this loss, didn't you? A. I guess so.

Q. And you wrote them yourself in your own handwriting? A. Yes, sir.

Q. This man Mack was a friend of yours also?

A. Yes, I was acquainted with him off and on for a number of years.

Q. What business was he in? A. Teamster.

Q. Is he not driving a team for a concern in Portland? A. I think he owns his own outfit.

Q. You wrote this letter to Davenport, Dooley & Company, July 3d, the date it bears?

A. I met with the loss on June 27th.

Mr. LANGHORNE.—You need not read the letter. He asked you if you wrote it?

A. Yes, that is my writing.

Mr. COLE.—We will offer that in evidence.

Mr. LANGHORNE.—No objections.

The COURT.—It may be admitted.

Whereupon said letter was admitted in evidence and marked Defendant's Exhibit "C" of this date.

(Testimony of William Black.)

(Mr. Cole hands witness another paper.)

The WITNESS.—(Examining.) Yes, I wrote this letter too.

Mr. COLE.—I wish to offer these in evidence. You wrote these four?

A. No, I never wrote that letter (indicating).

Q. You did not write that?

A. No, I wrote that letter (indicating).

Q. You wrote this one (indicating)?

A. I wrote that one (indicating).

Mr. COLE.—I wish to offer this in evidence.

The WITNESS.—I wrote this one (indicating) and not this (indicating).

Mr. LANGHORNE.—No objections. Which is the one he said he did not write?

The WITNESS.—This one, and this one (indicating). There are two I did not write.

Mr. COLE.—Do you know who wrote these?

A. I think Mr. Kayler wrote these.

Q. And you signed them?

A. I signed them, that is my signature.

Q. You sent them to Mr. Lloyd?

A. I sent them to him.

Mr. LANGHORNE.—No objections to any of them.

The COURT.—They may be admitted.

Whereupon said letters were admitted in evidence and marked Defendant's Exhibits "D," "E," "F," "G" and "H" of this date.

Q. Have you got the letters that were written to you by Mr. Lloyd?

(Testimony of William Black.)

A. I have not. I turned them over to one of my attorneys, [188] Mr. Miller, and I do not know what he done with them.

Q. You are not able to find them?

A. I cannot find Mr. Miller.

Mr. LANGHORNE.—That is Mr. Miller of South Bend?

A. Mr. Miller of South Bend. He has left the country.

Mr. COLE.—You also wrote this letter, did you (indicating)?

A. (Examining.) Yes, I sent it. I can tell by the Spencerian penmanship.

Mr. COLE.—Any objections to that?

Mr. LANGHORNE.—Not the slightest.

The COURT.—It may be admitted.

Whereupon said letter is admitted in evidence and marked Defendant's Exhibit "I" of this date.

Q. This letter of October 11th that you wrote was in reply to Mr. Lloyd's letter of October 9th, wasn't it?

A. I do not remember, I did not pay any more attention to it.

Q. Well, you received the original of this letter (indicating)?

A. (Examining.) I think I did; yes, I think I received it.

Mr. COLE.—I wish to offer that in evidence.

Mr. LANGHORNE.—No objections.

The COURT.—It may be admitted.

Whereupon said letter was admitted in evidence

(Testimony of William Black.)

and marked Defendant's Exhibit "J" of this date.

Q. Here is one August 31st, saying it is in reply to your favor of the 29th; all this correspondence, Mr. Langhorne, was in reply to his?

The WITNESS.—I think that is right.

Q. And this is one they wrote to you after they received [189] your proof of loss (indicating)?

A. Yes, sir.

Mr. LANGHORNE.—No objections.

The COURT.—It may be admitted.

Whereupon said letter was admitted in evidence and marked Defendant's Exhibit "K" of this date.

The WITNESS.—Yes, I surely received that, and I answered it, too.

Q. And this one here is part of the correspondence (indicating)?

(Witness examines paper.)

Mr. LANGHORNE.—No objections.

The COURT.—It may be admitted.

Whereupon said letter was admitted in evidence and marked Defendant's Exhibit "L" of this date.

The WITNESS.—I do not remember. I guess I received it, though. It is all right; I probably received it.

Q. Here is one dated August 20th, 1912.

Mr. LANGHORNE.—No objections.

The COURT.—It may be admitted.

Whereupon said letter was admitted in evidence and marked Defendant's Exhibit "M" of this date.

Q. This correspondence represents most of your dealings with the company after the fire? That

(Testimony of William Black.)

is about all of your negotiations?

A. That is all with the exception of the adjuster and that other man coming down there in January, 1913, six or seven months after this fire.

Q. That was after you started the suit, wasn't it?

A. Yes, they came down after the suit was started. Yes, [190] that is right.

Q. How about your cigars? Did you sell many cigars? A. Well, in the summer-time, yes.

Q. You are making claim here for some cigars that you bought in 1910, are you not?

A. I am making a claim for the cigars that I had in my building when I took stock.

Q. Now, some of these cigars were bought in 1910 by you, were they not?

A. I had cigars in 1910, some, I guess.

Q. And you bought cigars in 1911 that you make claim for in your proof of loss.

A. Well, say, I could not—(interrupted).

Q. You could not remember those dates?

A. I cannot remember. I bought lots of cigars and from different people, and I could not—(interrupted).

Q. You bought cigars from Gunst & Company, did you not?

A. Yes, Madison in Astoria and Taylor in Astoria.

Q. And some company in Portland?

A. Some company in Portland.

Q. Mason, Ehrman?

A. Mason, Ehrman & Company. I bought cigars in Seattle and San Francisco, and I bought cigars

(Testimony of William Black.)

from a man who came there; I bought cigars, tobacco, cigarettes, from a man who came there in May, 1912. He thought he would open up a cigar store, and they wanted me to charge him too much for rent and I bought 2,200 cigars from him, 1200 Optimos, and some other cigars, some plug tobacco and cigarettes.

Q. Some of these cigars you make claim for in your invoice [191] that you had on hand two years, would not be worth very much?

A. A cigar does not deteriorate if you know how to keep it.

Q. How long can you keep it?

A. I had some Y. and B. cigars from Mason, Ehrman, and I do not suppose I sold over a hundred of them. There was no call for them. Different men have different smokes, and they want different kinds of cigars, and you have got to have a large lot of different brands of cigars on hand, especially like the Carabanas, Y. & B.'s and Gatos. I bought lots of cigars from Campbell and Evans.

Q. What year did you buy from Campbell & Evans?

A. I cannot remember those dates.

Q. Campbell & Evans are out of business now?

A. I do not know whether they are or not. I will tell you the names of those cigars I bought from them, a great big large cigar.

Q. Your proof of loss, Mr. Black, shows a claim for cigars between \$560 and \$600 wholesale price. Now, about how many cigars did you sell a month?

A. In the summer-time you sell more.

(Testimony of William Black.)

Q. Could you give us something about the number you sold in the summer-time? A. I could not.

Q. Would you sell one a day or would you sell more than that? A. Yes, sure, more than that.

Q. Now, Mr. Dickinson testified that he sold about half a box during the month that he was there. That would be about an average of one and a half a day if he was there [192] thirty days?

A. I suppose so; you might estimate that, I could not.

Q. That would be a hundred cigars in sixty days, wouldn't it, in two months; that would be six hundred cigars a year on that basis?

Mr. LANGHORNE.—I object to that.

The COURT.—Objection sustained.

Q. Now, you make your claim—here is some goods that you bought, that you say you bought from Mr. J. J. Hagerty of Raymond?

A. It was J. J. Hagerty of Raymond, then, but he was doing business in Seattle. I bought some goods from him, yes, when he was in Seattle, I bought some Pineapple rock and rye. It was in big square bottles and I had a lot of that left.

Q. How many cigars did you buy from Mr. Hagerty?

A. I do not know; there was a lot of bulk liquor and case goods of different kinds. I do not remember; it was a long while ago, but I had some of his stock on hand that consisted of special stuff such as I told you, of Pineapple rock and rye. You see it in the list there (indicating).

(Testimony of William Black.)

Q. You do not know how long ago you bought that?

A. It was previous to *come* to Long Beach, maybe four years before.

Q. Maybe four years before you came to Long Beach? A. Yes, maybe four years before.

Q. It was about eight years from the time of the fire?

A. Yes. I bought some Damiana Bitters from him, too.

Q. Two cases of Pineapple rock and rye in your claim? [193] A. Yes, sir.

Q. Did you make any claim for any other goods that you bought from Mr. Hagerty?

A. I bought some Damiana Bitters.

Q. Anything else?

Mr. LANGHORNE.—He is speaking about the proof of loss.

Mr. COLE.—Yes. Did you make any claim for anything else than the bitters in your proof of loss that you bought from Mr. Hagerty?

A. I do not remember. I know I bought quite a lot of goods from Mr. Hagerty at that time.

Q. The firm you dealt with, Blumaer & Hoch of Portland, sold you most of your goods?

A. Oh, no, not at all.

Q. They sold you more than any other firm?

A. No, sir.

Q. What firm sold you the most?

A. I bought from various firms, everybody and anybody.

(Testimony of William Black.)

Q. Tell me what firm did more business with you than the others?

A. I did lots of business with James J. Hagerty—not Hagerty but De Fremery of San Francisco. He is now dead, but the firm is still in existence.

Q. Your testimony tends to show that you bought about \$2,900 worth from Blumaer & Hoch?

A. I bought more than that from them.

Q. You bought more than they have testified to?

A. I sold them certificates for twenty-five barrels of Sunnybrook whiskey.

Q. They gave you credit for that on that—(interrupted). [194]

A. Yes, in 1907—1908.

Q. It shows on that (indicating)? A. Yes, sir.

Q. You don't mean to tell the jury you got more goods from Blumaer & Hoch than they have testified to?

A. I never said I bought more than they testified to.

Q. I understood you to say you bought more than \$2,900 worth? A. I suppose I have.

Q. From Blumaer & Hoch?

A. Yes, that is nothing.

Q. Now, you bought from several firms in Louisville, did you not? A. Yes, sir.

Q. Did you buy from any firms whose deposition we have not taken here in this case?

A. Yes, sir.

Q. Who was it?

A. The Old Times Distilling Company, or the Old

(Testimony of William Black.)

Times Distillery, and the Kentucky Distillery Company.

Q. The Old Kentucky Distillery Company?

A. Yes, sir.

Q. You do not mean Old Times, you mean Old Kentucky Distillery Company?

A. A lot of them distilleries have been absorbed by corporations. I believe one corporation has two now, the Green River Distillery is by itself, and Brown-Forman, and I believe they make the Frazier whiskey.

Q. What I want to find out is the names of the people you bought from in addition to those whose depositions we have [195] taken?

A. I bought from all of the first-class distilleries in the State of Kentucky, very nearly.

Q. Can you name some of them besides those we have mentioned?

A. Well, I cannot. I could if I could see a list of the distilleries, I could tell you those I have been doing business with about ten years, I guess.

Q. I am asking you just in regard to the stock that was destroyed by fire.

A. I have not got—I have bought whiskey from Fleckenstein.

Q. Fleckenstein is mentioned here?

A. Yes, sir. I have bought from Sherwood & Sherwood of San Francisco.

Q. Their deposition is mentioned in here.

A. Chevalier & Company.

Q. They are also mentioned here.

(Testimony of William Black.)

A. Yes, sir.

Q. These are answers to some interrogatories that were propounded to you, were they not?

Mr. LANGHORNE.—Just answer whether or not they are.

Q. Your signature is on the back. You do not need to read them.

A. William Black, yes, that is me.

Q. Now, in these interrogatories you say that you bought your stock from Julius Kessler of Chicago, and one firm in Baltimore, Blumenthal & Beckert?

A. Yes, sir.

Q. And those four Louisville concerns?

A. Yes, sir.

Q. And three in San Francisco? [196]

A. Yes, sir.

Q. And Blumaer & Hoch in Portland, and Fleckenstein in Portland, Rothchild in Portland, Ecklund in Portland, Sherwood & Sherwood in San Francisco and De Fremery & Company, Bonney Brothers? A. Loyal Kentucky.

Q. You state in your answers to these interrogatories that you bought some of that stock from the Sunnybrook Distillery Company, did you not?

A. I never said that I had any Sunnybrook whiskey. I said that I sold twenty-five certificates to Blumaer & Hoch. I did not like the whiskey and I sold them the certificates.

Mr. LANGHORNE.—How many barrels?

A. Twenty-five barrels. I never had any Sunnybrook in my house.

(Testimony of William Black.)

Q. It says in answer to Interrogatory Number 41, "To the best of his recollection and memory, that the names of other persons, firms or corporations, from whom he has purchased all other goods upon which the above-entitled action is based, and for which a claim of loss is made, are as follows, to wit:" And among them is the Sunnybrook Distillery Company?

A. Yes, sir.

Q. The Sunnybrook Distillery Company. That was wrong, was it?

A. I bought that from—(interrupted).

Q. You did not get any of your stock from the Sunnybrook Distillery Company?

A. I bought twenty-five certificates but sold the certificates. [197] That is one of the firms I done business with but I never sold Sunnybrook whiskey.

Q. You read this before you signed it?

A. That is a mistake in there, an oversight, because I never sold any Sunnybrook whiskey.

Q. You never had any in your saloon?

A. I never had any in my possession that I know of.

Q. You bought Sunnybrook and turned the certificates over to other parties? A. I sold them.

Q. You never had any in your saloon?

A. Never had any Sunnybrook in my store to my knowledge.

Q. That is incorrect (indicating)?

A. That statement there is a mistake if it is there.

Q. Are you sure you bought some goods from the

(Testimony of William Black.)

Old Kentucky Distillery Company? Could you swear to that?

A. I think that is the name of it; it may have some other name—Old Kentucky—the brand of whiskey they make is called Honey Dew whiskey and that is the name of the distillery.

Q. Can you give me the name of any firm from whom you bought goods that is not mentioned in this statement?

A. Well, I bought goods from so many people that I cannot remember them all in that length of time.

Q. Is it not a fact, Mr. Black, that this list consists of all that you bought for your saloon?

A. Since I have been in business so long, I do not remember all of the firms; that would be impossible for me to do that.

Q. Where did you get this information that you set out here [198] (indicating)?

A. It was just firms that I remember that I done business with.

Q. Did you remember Mr. Hagerty eight years ago?

A. He is down in my country and he is now in the banking business; he graduated from the saloon business in the banking business.

Q. You remember Sherwood in Frisco; you didn't buy any since the earthquake?

A. *There may be* pay for some whiskey that went down on the Columbia, some whiskey that was not insured, and they made me pay for it. They made me pay for the goods that were lost and duplicated

(Testimony of William Black.)

the order that was lost, and collected for that too.

Q. Did you make a claim for these goods that went down on the Columbia?

A. Yes, I gave it to a lawyer and the lawyer told me that if I did not pay for it—(interrupted).

Q. You gave them as one of the firms?

A. I had bought lots of imported goods from them, but I never purchased any after they did that to me, but I had some Sherwood & Sherwood imported goods on hand.

Q. You didn't buy any from them since the earthquake?

A. They don't make any whiskey. I have got whiskey of them for years.

Q. That does not answer the question. Did you ever buy anything from them since the earthquake in 1906?

A. If you can remember when this Columbia went down, right after that they duplicated the order and made me pay for both orders, the first thing I knew they sent me [199] a dun, please remit, and I wrote on the bottom of it that I never received these goods, and they said that the goods had been lost on the Columbia and they had duplicated the order and I thought as they had done previously they had these goods insured, and they claimed these goods were not insured, and I had to pay for them.

Q. Going back to the time of the taking out of the policy. Before you got this policy you had insurance on your stock for \$2,000? A. Yes, sir.

Q. And Mr. Loomis carried that insurance for

(Testimony of William Black.)

you? A. Yes, sir.

Q. Mr. Loomis is an insurance agent at Long Beach? A. He lives at Nahcotta.

Q. That is in your neighborhood?

A. Yes, it is seven or eight or ten miles.

Q. And he had a policy of \$2,000 on your goods?

A. Yes, sir.

Q. \$1,500 on the building?

A. \$2,000 on the building.

Q. That was on the fixtures?

A. I believe so, maybe.

Q. Now, his policy expired on the 16th of June, didn't it? A. No, sir, it expired in July.

Q. July, 1912?

A. I think so. I would not be positive.

Q. You would not swear to that?

A. Say, I won't swear to anything that I am not sure and certain of.

Q. And you returned this policy to him on the 8th of June, [200] didn't you?

A. I returned his policy to him after I took out another policy; that is the present policy.

Q. And you returned this policy to him before it expired?

A. I returned it before it expired, yes, sir.

Q. And between the time that you had that \$2,000 —between the time that you returned that insurance of his and the time you took out this policy, you had a policy of \$5,000 in the Royal Insurance Company, which was cancelled too, didn't you?

A. On that—(interrupted).

(Testimony of William Black.)

Q. On the stock of goods?

A. Now, I will tell you—I do not—there is something about it—I do not know whether it was before or whether it was on the hotel that I took it out, after the fire. I know there was a policy or two, somebody wrote up these policies and then they wrote back the agent did not care to take the risk under the present conditions, down there. I do not know whether it was on the saloon or whether it was on the hotel at the time of the fire. I had no policy on the hotel but after this fire I took out a policy and it was rejected, sent back, and I saw the letter and they said to the agent they did not wish to take the risk under the present conditions or something to that effect, existing in Long Beach at that time.

Q. On account of its going dry?

A. On account of the different fires that had occurred and the factions there and so on.

Q. Did you have any more stock under the other policy than [201] you had under this one?

A. I would like to explain something to you and the jury.

Q. Go ahead.

A. Right back of this building I had a warehouse and that is where I had the whiskey and where I kept lots of goods. It was a straight up and up board, twelve inches high, one shed roof, no *battings* on the cracks. It was built out of green lumber. Someone had broken in there and stolen some of the goods out of that place, not much, a few bottles, they stole some Budweiser beer I had stored in there in

(Testimony of William Black.)

barrels and I removed all of this liquor I had in this storeroom into the main building, because it was not safe. They could go in there. There was cracks in the storeroom, and they could pry loose and take this stuff out. I never had an insurance on that stock in there. They pried it open at the bottom of the boards and worked it like a door. I wish Mr. Stit could have testified; he has been in there.

Q. How many barrels did you have in that out-building?

A. A number of them. I could not state how many.

Q. Did you have two?

A. Oh, yes, a lot more than that.

Q. A dozen?

A. Six or seven or eight barrels in there.

Q. What brands were they?

A. Different brands.

Q. Name some of them.

A. There were five barrels of Old Crow in there.

Q. Now, at the time you took out this policy, you had some [202] conversation with Mr. Loomis about his writing some insurance on this stock, didn't you? Didn't you ask him for a \$5,000 policy on it?

A. I never asked Mr. Loomis a thing about it. I was going to cancel my Loomis policy but that man had had two or three fires and he had had trouble, he had made trouble, and I was going to quit him, I had promised this other agent that I would give it to him.

(Testimony of William Black.)

Q. Isn't it a fact that you told Mr. Loomis that you wanted \$5,000 on that stock?

A. Never told Mr. Loomis nothing of the kind.

Q. Will you swear to that?

A. I will swear to that.

Q. Did you have any other conversation with him about your going to fix all of the people and get out of there, something like that?

A. The only conversation I had with Mr. Loomis was I had a row with him in front of the hotel. He told some people after this fire took place that he was too sharp, they could not catch him; that he had cancelled my policy just previous to this fire.

Q. Said that he had?

A. He told some people that at the life-saving station.

Q. Is it not a fact that you asked Mr. Loomis to give you \$5,000 on this stock, and he said the insurance company was from Missouri and you would have to have the stock, is not that a fact?

A. No such a conversation as that ever took place between me and Mr. Loomis, and furthermore I had not even seen Mr. Loomis for two months previous to that fire. [203]

Q. You did not have any talk with him?

A. No, sir—or more, possibly more.

Q. You didn't have a talk with him in May, 1912?

A. No, sir, I did not.

The COURT.—If you expect to impeach him, you will have to fix the place and time and persons present.

(Testimony of William Black.)

Q. Didn't you have such a conversation with Mr. Loomis about the month of May at Long Beach?

A. No, sir, I did not. I never had any such conversation with Mr. Loomis or any other man. If you wish to know the circumstances, I will tell you why I took out this \$5,000 policy.

Q. Go ahead.

A. Well, I am going to tell it. In the first place, if you wish, I will go right into the matter.

Q. We want to know why you took this out.

A. I will show you the whole business. We will get right down to the foot of the ladder and climb up. Now, in lots of places, gentlemen—(interrupted).

Mr. LANGHORNE.—I do not think the jury and the Court desires to hear your troubles with other people down there unless counsel insists upon it.

Mr. COLE.—We would be glad to hear it if he wants to explain.

The COURT.—Ask your questions.

Q. Will you explain why it was that you took out that \$5,000 policy?

A. Well, I would—(interrupted).

Mr. LANGHORNE.—Now, explain.

A. I had written a letter to the "Evening Telegram" of April [204] 18th, exposing a bunch down there that was trying to catch people of small means, selling them lands upon misrepresentations, and one of these parties tried to catch a friend of mine for \$6,000, and I knocked it in the head. Then they got sore and said I was a knocker and they were

(Testimony of William Black.)

going to do me up, and they started to work and got up a petition and people would not sign it. Most of them said, "If you want to put the saloons out, we will sign for all, but we won't sign against a loan." That kind of died down and then they got at it again. I kept on. They said they were going to do me up. That was all right, I thought I could hold myself level with them but why I took out this insurance, what scared me up, there was a lady and her husband ran one of the branches of the Aberdeen store, Mrs. C. E. Kerlee and a lady, they are friends of mine and we visit back and forth and they have a little boy, and there is a preacher's son, and I believe they have what do you call it?

Q. Remonstrance, petition?

A. No, sir, what you get from a witness.

Q. Affidavit?

A. An affidavit from this young fellow of eighteen years of age who was talking with this young lady after the fire at Seaside and she said it was pretty bad to have a fire at Seaside so close to the opening of the season, and he said, yes, it is too bad. We are going to have a fire in this town some of these nights and she says, "How is that?" And he said, "This saloon of Bill Black's is going up in smoke," and she tried to get out of him [205] the reason. She came over and told my wife and I was sitting by the stove reading; there was nobody in there and she called me out and told me the circumstances, and I locked the door and went over and saw this lady, and she told me the conversation. My wife does

(Testimony of William Black.)

not speak very good English, she came from South America, and I thought probably my wife misunderstood her and she told me the conversation. Then I hunted this boy up and he did not give me no satisfactory answer under *and* the conditions—of course, naturally, his father being a preacher and opposed to saloons, and the boy naturally would mingle with the church people and I thought that he might have heard something that dropped and he did not want to tell it. I goes right to Kayler and I says, "Here, I am going to get my own insurance. I am afraid they are going to try and burn me out," and I told him the circumstances, and I said, "If you will take the risk, all right, and if you don't I will go down and I will see Brunbaugh, but if you want to take the risk all right." I did not use any underhand methods. That was open and above board. And I will tell you another thing, if I had been in that town when that fire took place, I would be in Walla Walla to-day; they would swear that they seen me in the building,—leaving the building.

Q. You think the object of these people was to burn this property and send you over there?

A. I believe it was, exactly, yes, I do, and so does every fair-mined person down there.

Q. That is your theory of the fire, that your enemies burned [206] it?

A. Yes, that is my theory; that is my opinion.

Q. This petition you spoke of as being circulated around there, is this the petition (indicating)?

A. In the first place I never saw this petition;

(Testimony of William Black.)

this is only hearsay.

Q. That has been shown to you?

A. I never saw this petition myself, but I—(interrupted).

Q. Who circulated it?

Mr. LANGHORNE.—What is the object of this?

Mr. COLE.—He stated that he never heard about any petition being circulated.

Mr. LANGHORNE.—I object to all this as absolutely irrelevant and immaterial and not proper cross-examination.

The COURT.—Objection sustained.

Q. Who was it told you it was being circulated?

Mr. LANGHORNE.—I object to that for the same reason.

Objection overruled.

A. I do not remember who it was. I heard it. I did not pay much attention to it at the time.

Q. And you knew it was afterwards filed with the county auditor?

A. I did not know anything about it. All I knew is that there was a petition being circulated around there. They said I was a knocker, that I was knocking the cranberry lands around there—(interrupted).

The COURT.—Answer the question. You must try this lawsuit alone, not by trying for general results.

Q. On the 13th day of March, 1912, the deputy assessor,—what is his name,—came in to assess your property? [207] A. Shaygren.

(Testimony of William Black.)

Q. You had some conversation with him there in your saloon as to the amount of stock you had on hand? . A. Probably I did, naturally I would.

Q. Is it not a fact that you stated to him that you were running your stock down, that you were going out of business?

A. I never said anything of that kind to him about that.

Q. Isn't it a fact that you stated while he was there, and in his presence, you went and got a hammer and went around and tapped all the barrels to show that they were all partly empty? A. I did not.

Q. Did you have any conversation with him as to the amount of stock you had on hand?

A. I told him there was the stock, "Help yourself, go to it."

Q. Did he ask you to place a valuation on it?

A. No, sir—(interrupted).

Q. Now, did you have any conversation with Mr. Hazeltine, of South Bend, down there at Long Beach, about two years prior to the fire in which you stated that you were running your stock down and was going out of business?

A. The only conversation that I remember of ever having with Mr. Hazeltine in regard to the liquor business was this: He told me, he said, "Black, I hate to see you in the business. You are not the man for that business"—(interrupted).

Q. You can answer that question yes or no. [208]

Question read.

A. I do not remember of having any conversation

(Testimony of William Black.)

with Mr. Hazeltine. He is not a saloon man at all, he does not go into saloons—(interrupted).

Q. That is all. Never mind. Did you ever have any conversation in your saloon with Mr. Brown, the Assessor, in which you stated you were running your stock down and you did not have much of anything on hand and the barrels were empty?

A. With Mr. Brown?

Q. Yes.

A. No, sir, never did, that my barrels was empty and that I was running the stock down, never did.

Q. I will ask you whether or not there was substantially the same conversation with Mr. Brown that I asked you about in connection with Mr. Shaygren?

A. I do not remember of ever having any conversation with Mr. Brown in regard to my liquors.

Q. When you hired Mr. Dickinson, you went to Portland at once, in May? A. Yes, sir.

Q. How long did you stay in Portland?

A. I guess a couple of weeks or so. I do not remember exactly.

Q. When did you go over there?

A. I think I came down to Astoria and then came over home.

Q. You state you left Long Beach on the 27th of May and stayed in Portland about two weeks. That would be about the 10th of June?

A. I do not remember the exact dates. [209]

Q. Do you remember the date that you went—that you went to Portland?

(Testimony of William Black.)

A. I do not remember the dates I went to Portland.

Q. When you went back to Long Beach on the 22d, did you go straight from Portland or did you,—had you been in Astoria a few days?

A. When I left the last time, I went to Astoria.

Q. You did not go to Long Beach?

A. I did not go to Portland, I went to Astoria.

Q. How long had you been in Astoria?

A. From the time I left up to the time of the fire—
(interrupted).

Q. I mean when you went over there before the
fire, you were over there at Long Beach Saturday
before the fire, the 22d, did you go from Astoria or
Portland when you went to Long Beach at that
time? A. From Astoria or Portland?

Q. Yes.

A. I think I stayed in Astoria a day or so.

Q. Came down from Portland?

A. Came down from Portland on the train.

Q. And then you stopped at Astoria a day or so?

A. I am not sure whether I did or not.

Q. You are not sure whether you stopped at Astoria or went direct to Long Beach?

A. That is right.

Q. When you went back to Astoria, from Long Beach, did you stop at the Parker Hotel?

A. The Parker House, I always stay there.

Q. I see. Now, when you went to Long Beach on the 22d of [210] June, did you go on the regular launch? Do you remember the name of it?

A. Yes, sir.